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SUPREME COURT OF THE UNITED STATES.

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JOSEPH OSTERMAN, THOMAS F. McKINNEY, JOHN H. ILLIES, and MALVINA, his wife, & al., App'ts.,

vs.

HARVEY BALDWIN.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF TEXAS.

GIDEON, Printer.

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SUPREME COURT OF THE UNITED STATES.

No. 292.

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vs.

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Caption.

The United States of America, District Court of the United States, Eastern District of Texas, at Galveston, to wit:—

At a term of the District Court of the United States of America, begun and held at the city of Galveston in and for the Eastern District of Texas, on the first Monday of the month of May (it being the second day of said month), in the year of our Lord one thousand eight hundred and fifty-nine, to wit, on the tenth day of June of said year, it being a day of said term; present the Honorable John C. Watrous, Judge of said court, George Mason, Esq., District Attorney, H. E. McCulloch, Esq., United States Marshal, and James Love, Clerk. Among others, were the following proceedings, to wit:—

In the matter of

HARVEY BALDWIN, Complainant,
and
THE GALVESTON CITY COMPANY et al., Def'ts. } No. 57. In Chancery.

Be it remembered, that heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and fifty, came the complainant, by his solicitors, and filed his bill herein, which is as follows, to wit:—

Bill.

To the Honorable the Judge of the District Court of the United States for the District of Texas, sitting in equity:—

Harvey Baldwin, who is a resident of the city of Syracuse, and a citizen of the State of New York, brings this bill of complaint against the Galveston City Company, which is a body corporate, created under the laws of the late Republic of Texas, and whose office and principal place of business is located in the city of Galveston, in said State of Texas, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, Mrs. Illies, wife of John H. Illies, and her said husband, John H. Illies, Christian Dieckman and Lemuel Smith, who are all citizens of Texas, and Antoinette Officiers, an infant, daughter of the late Antonio Officiers, late a citizen of Texas, and whose mother, Ann H. Seeling, guardian of said infant, is also a citizen of said State of Texas, and William R. Baker, who is also a citizen of the State of Texas aforesaid; and thereupon your orator complains, and says:—

That on or about the first day of January, A. D. 1839, he acquired an interest by assignment and purchase, entitling him to a fee simple conveyance from the Galveston City Company, in lots 5 and 11,

block number 617, in the city of Galveston; and lot number 12, in block number 443, in said city; and that he took, therefor, as evidence of his said right and interest from Levi Jones, who was the agent of said Company, a certificate and memorandum in the words and figures following, that is to say:—

"Certificate of purchase in Galveston City. I, Levi Jones, agent for the Galveston City Company, do hereby certify that Harvey Baldwin, having become the purchaser of three lots in said city, viz., lots number five and eleven (5 and 11), in block number six hundred and seventeen (617), and lot number twelve (12), in block number four hundred and forty-three (443), for the sum of twenty-five hundred dollars and cents, and having on his part complied with the terms of sale as prescribed by the Board of Directors, is entitled to receive a conveyance for said lots under the orders of the Board (with a lien upon the said lots for the payment of A. C. Allen's notes), as soon as the company are prepared to execute deeds in proper form.

Witness my hand this first day of January, 1839.

LEVI JONES,
Agent for Galveston City Co."

Signed in presence of WM. F. MAURY."

And your orator further shows, that on the fifth day of May, A. D. 1840, by an arrangement between your orator and the said A. C. Allen and the Galveston City Company, acting through their duly authorized agent, Gail Borden, Jr., the said Galveston City Company relinquished the said lien upon said lots for the payment of the notes given by said A. C. Allen, and that the said agent endorsed upon the said certificate the following memorandum as evidence of the relinquishment of the said lien, viz:—

"Deed No. 113. H. Baldwin's certificate of Galveston City lots. This is to certify that the lien as expressed in the twelfth line on the within certificate, is this day taken off and charged to the account of A. C. and J. K. Allen, agreeably to the order releasing the lien on one-half of the lots purchased, for which stock is pledged.

Galveston, May 5th, 1840. GAIL BORDEN, Jr.,
Agent for Galveston City Co."

And your orator further shows, that for the sake of convenience in the care and management of said lots, your orator assigned the said certificate to said Gail Borden, Jr., in trust for your orator's own benefit, but without any other consideration therefor, and which said assignment, made with the assent of the said Borden, is on the back of the said certificate, and is in the words and figures following, that is to say:—

"For value received, I hereby transfer all my right, title, and interest in the within certificate, to Gail Borden, and request title to issue to him without lien.

Done, June 4th, 1840. HARVEY BALDWIN, [L. S.]"

And your orator further shows, that on or about the fifth day of May, A. D. 1840, the said Galveston City Company, through their said agent, issued their certificate of sale for lot 11, in block 622 in said city to one Mosely Baker, and which said certificate is in the words and figures following, that is to say:—

"No. 364. Certificate of purchase in Galveston City. I, Gail Borden, Jr., agent for the Galveston City Company, do hereby certify, that Mosely Baker having become the purchaser of one lot in said city, viz., number (11) eleven, in block number six hundred and twenty-two (622), for the sum of ten hundred and twenty-five dollars (1025), and cents; and having on his part complied with the terms of sale, as prescribed by the Board of Directors, is entitled to receive a conveyance for said lot, under the orders of the Board (with a lien upon the said lot for the payment of his notes), so soon as the Company are prepared to execute deeds in proper form.

Witness my hand, this 5th day of May, A. D. 1840.

G. BORDEN, JR.,
Agent for Galveston City Company."

Signed in presence of

Your orator further shows, that on the 20th day of May, A. D. 1840, the said Mosely Baker transferred and assigned said certificate to one James S. Holman, by an assignment, or transfer endorsed thereon, in the words and figures following, that is to say:—

"Deed No. 113. For value received, I hereby transfer all my right, title, to the within certificate, and the premises therein mentioned, to James S. Holman, and request title to issue to him or to his order, without lien.

Dated May 20, 1840. MOSELY BAKER. [L. S.]"

In presence of,
A. C. ALLEN,
WM. H. JACK.

Your orator further shows, that at the time of the said assignment and transfer from Mosely Baker, your orator had become the purchaser, by agreement, from the said Mosely Baker, for a consideration actually passed between your orator and the said Baker, and that the transfer of the said Baker to Holeman was made with the assent of your orator in trust for the benefit of your orator, and that the said Holeman acquired no equitable interest in the said certificate by said transfer, and that the said Holeman was a mere naked trustee for the benefit of your orator by virtue of said assignment. That afterwards, to wit, on the 4th day of June, A. D. 1840, the said James S. Holeman, at the request of your orator, but without any consideration, transferred and assigned the said certificate to Gail Borden, Jr., as the trustee of your orator, and which said assignment is endorsed on the said certificate, in the words and figures following, that is to say:—

"For value received, I transfer all my right and title to the within certificate, and the lot therein mentioned to Gail Borden, and request a deed to issue to him without lien, as aforesaid.

Dated June 4th, 1840. JAMES S. HOLMAN."

Witness—E. S. REDOUT,
M. B. MENARD.

Your orator further shows, that the said transfer to Gail Borden was for the exclusive benefit of your orator, without any consideration passing from or to the said Borden, and in taking said assignment, said Borden acted as a naked trustee for the benefit of your orator, and for the sake of convenience in the care and management of said lots therein described.

And your orator further shows unto your honor, that on or about the 5th day of May, A. D. 1840, the said Galveston City Company, through their said agent, Gail Borden, Jr., issued their certificate of sale, for lots 13 and 14, in block 380, in said city, to A. C. and J. K. Allen, and which said certificate is in the words and figures following, that is to say:—

"No. 365. Certificate of purchase in Galveston City. I, Gail Borden, jr., agent for the Galveston City Company, do hereby certify that A. C. and J. K. Allen having become the purchaser of two lots in said city, viz., number thirteen and fourteen (13 and 14) in block three hundred and eighty (380), for the sum of twelve hundred and thirty-five (1235) dollars and cents, and having on their part complied with the terms of sale prescribed by the Board of Directors, are entitled to receive a conveyance of the said lots under the orders of the said board (with a lien upon the said lots for the payment of their said notes), so soon as the company are prepared to execute deeds in proper form.

Witness my hand this 5th day of May, A. D. 1840.

G. BORDEN, JR.,
Agent for the Galveston City Company."

Signed in presence of

And your orator further shows, that the said certificates afterwards passed by assignment from the said A. C. and J. K. Allen to Michael B. Menard, of the city of Galveston; that your orator afterwards became the purchaser of said certificate, and by an arrangement made with the said A. C. and J. K. Allen and the said Michael B. Menard, the said certificate was duly assigned and transferred to Gail Borden, jr., as the trustee of your orator, by an assignment endorsed on said certificate in the words and figures following, to wit:—

For value received I hereby sell and transfer to Gail Borden, jr., all my right, title, and interest, to the within certificates, and the

lots therein mentioned, and request a deed of conveyance to issue to him without lien. Dated June 4th, 1840.

M. B. MENARD,
Assignee of A. C. Allen.

Witness,
E. J. RIDOUT,
JAMES S. HOLMAN.

And your orator further shows, that the interest in the said certificate was assigned and placed in the said Gail Borden in trust for the benefit of your orator, and for the sake of convenience in the care and management of the said lots, without any consideration passing from the said Gail Borden, and that the equitable interest in and to the said certificate and the said lots, were at the time of said assignment exclusively in your orator.

And your orator further shows, that on or about the 5th day of May, A. D. 1840, the said Galveston City Company, through their said agent, issued their certificate of sale of lot number 12 in block 733 in said city, to the said A. C. and J. K. Allen, and which said certificate is in the words and figures following, that is to say:—

"No. 366. Certificate of purchase in Galveston City. I, Gail Borden, Jr., agent for the Galveston City Company, do hereby certify that A. C. & J. K. Allen, having become the purchaser of one lot in said city, viz., number twelve (12), in block seven hundred and thirty-three (733), for the sum of twenty-three hundred (2300) dollars and cents, and having on their part complied with the terms of the sale as prescribed by the Board of Directors, are entitled to receive a conveyance for said lot under the orders of the Board, with a lien upon the said lot for the payment of their notes, so soon as the company are prepared to execute deeds in the proper form.

Witness my hand, this 5th day of May, A. D. 1840.

G. BORDEN, JR.,
Agent for Galveston City Company."

Signed in presence of

Your orator further shows, that afterwards, to wit, on or about the 4th day of June, A. D. 1840, he, your orator, became the purchaser of the said certificate from A. C. Allen, the surviving partner of A. C. & J. K. Allen, who was duly authorized to assign the same, and that the same was duly assigned by said Allen to Gail Borden in trust for the benefit of your orator, by an assignment endorsed thereon, and which said assignment is in the words and figures following, that is to say:—

"For value received, I hereby sell and transfer to Gail Borden all my right and title to the within certificate and the lot therein

mentioned, and request a deed to issue to him for the same without lien.

Dated June 4th, 1840. JAMES S. HOLMAN,
For A. C. ALLEN,
Surviving partner of A. C. & J. K. Allen."

Witness—E. J. REDOUT,
H. BALDWIN.

And your orator further shows, that the equitable interest in the last mentioned certificate was exclusively in your orator; that the same was assigned in trust to the said Gail Borden for the benefit of your orator, without any consideration passing from said Borden; and that said assignment was made to said Borden for the sake of convenience in the case, and management of said lots, and that further at said time, your orator, by arrangement with the assignees of said certificates, and with the said Galveston City Company, and by arrangement between the said Galveston City Company and the assignees of said certificates, your orator was entitled in equity to a full and ample fee simple conveyance of all and singular the lots and premises mentioned and described in the said certificates, without any lien whatsoever, having paid the full price as mentioned in the said certificates in good faith. And further your orator states, that he had possession of all and singular the said certificates, and delivered them to said Gail Borden, jr., in trust and special confidence that the said Gail Borden, knowing and understanding as he did the equities of your orator, would protect the said equity and interest of your orator, and that he would, when the said company should be prepared to make conveyances, receive a deed or deeds of the said several lots and premises for the benefit of your orator, either in the name of himself or in the name of your orator.

And your orator further shows, that after the assignment and transfer as aforesaid to the said Gail Borden, he, the said Gail Borden mentioned and suggested to your orator, that, as he, the said Gail Borden, would probably be the person to execute the deeds on the part and behalf of the Galveston City Company, and that it would not appear well or look consistent for him, the said agent, to be executing deeds to himself, it would be well to have some other person substituted as the trustee of your orator in the place of him, the said Borden, that the said James S. Holman, being present at the said conversation, the said Borden mentioned to your orator, in the presence of the said Holman, that the certificate could be placed in the name of the said Holman, and that he, the said Holman, could be substituted in the place of the said Borden, and that your orator and the said Holman then and there, on the said 4th day of June, A. D. 1840, assented to said arrangement; that in pursuance thereof, on the said 4th day of June, A. D. 1840, assignments were endorsed on all the said certificates by said Borden to said Holman,

without consideration, and signed by said Borden, which said assignments, though actually made on the 4th day of June, A. D. 1840, after the respective assignments to said Borden, were dated by mistake as of the 3d day of June, 1840, when in fact and in truth they should have been dated and borne date as of the 4th day of June, A. D. 1840.

And your orator further shows unto your honor, that, as he is informed, and believes to be true, the said James S. Holman took no delivery of the said certificates and assignments, either from your orator or the said agent, Gail Borden, jr., but that the said certificates remained in the possession of the said agent, Borden, and in the office of the Galveston City Company, in the city of Galveston, where the same have always remained since the said 4th day of June, A. D. 1840, and that on the said 4th day of June, A. D. 1840, the said certificates and assignments thereon were attached and endorsed in an envelope, endorsed as follows, that is to say :—

"No. 113, James S. Holman,

Lot No.	5	and	11	in	block	617,	
" "			12	"	"	443,	
" "			11	"	"	622,	In trust.
" "	13	"	14	"	"	380,	
" "			12	"	"	733."	

That the said words "in trust" are, as your orator is informed and believes, in the handwriting of said Gail Borden, jr., the agent for the said company, and to which said certificates, assignments, endorsements, and filings thereon, now remaining in the office of the Galveston City Company, your orator prays leave to refer and to prove the same if need be.

And your orator further shows unto your honor, that after diligent search and inquiry, he cannot ascertain with certainty whether any conveyance has ever been made by the said Galveston City Company to the said James S. Holman, or by any person or persons holding the fee of the said land, on the said 4th day of June, A. D. 1840, but your orator has lately been informed by the said James S. Holman, that no deed of the said lots, or any portion of the same, has ever been made to him, the said Holman, or to any one else by his direction, which your orator believes to be true; and further, your orator says that he can find no conveyance of said lots recorded in the county of Galveston, or elsewhere, from the Galveston City Company to said Holman, or from the Galveston City Company to any other person, wherefore your orator, on information and belief, charges and insists that no conveyance has ever been made and delivered by said company to said Holman, or to any other person by his order or direction.

And your orator further shows, that on or about the 6th day of January, A. D. 1845, your orator applied to the said James S. Hol-

man for a conveyance of the lots mentioned and described in the said certificates, supposing at the said time that the said lots had been conveyed by the Galveston City Company in trust to said Holman; that the said Holman, on or about the said sixth day of January, executed and delivered to your said orator a deed of the several and respective lots mentioned and described in the said several and respective certificates herein set forth, and which said deed was duly recorded in the office of the clerk of the county of Galveston, in Book F, page 284, on the 12th day of October, A. D. 1846, at 9 o'clock A. M., and to which said deed and the certificate of registry thereon, or to the record thereof, now remaining in the office of the clerk of the said county of Galveston, your orator for greater certainty prays leave to refer, and to prove the same if need be.

And your orator further showeth unto your honor, that afterwards, to wit, on the 4th day of June, A. D. 1845, your orator executed a deed of conveyance in trust, for the benefit of himself, of the several and respective lots, mentioned and described in the said certificates hereinbefore set forth, to William P. Baker, of the city of Houston, and which said deed afterwards, to wit, on the said 4th day of June, A. D. 1845, was duly recorded in the office of the clerk of the county of Galveston, in Book E, page 290, and to which said deed and the certificate of registry endorsed thereon, or to the record of the same, now remaining in the office of the clerk of the county of Galveston, your orator prays leave to refer, and prove the same if need be.

And your orator further shows, that the said deed last mentioned contains a recital to the effect that the said lots in the said certificates mentioned, had been deeded in trust by the Galveston City Company to the said James S. Holman for the benefit of your orator, and which your orator at the time of the execution of the said last mentioned deed supposed and believed to have been true, and which your orator had been previously informed by Gail Borden, the agent of said Galveston City Company had been done, and which the said James S. Holman, at the time of executing his said deed to your orator, also thought, as your orator believes, had been done, as such was the express understanding between your orator, the said agent and the said Holman, that the same should be done at the time of the creation of the trust in said Holman, but which, nevertheless, your orator cannot ascertain has ever been done by the said Galveston City Company, wherefore your orator charges as before, on information and belief, that the same has never been done.

And your orator further shows unto your honor, that some time about the year A. D. 1840, and on or about the 17th day of June, of that year, the said defendants, Thomas F. McKinney and Samuel M. Williams, obtained a judgment against the said James S. Holman, in the District Court of the county of Harris, in the then Republic of Texas, for the sum of $3517 87 debt and damages, besides costs of suit; that afterwards, to wit, on or about the thirty-first day of July, A. D. 1840, a process issued to the

sheriff of the said county of Harris, purporting to be a writ of fieri facias on said judgment, but which said process or writ contained no return day, but which was returned by the sheriff of said county unsatisfied, but which said return contains no certificate or covenant to the effect that the said defendant therein named, the said James S. Holman, had been applied to by said sheriff to point out property for the purpose of a levy to satisfy said process or execution.

And your orator further shows that on or about the 22d day of June, A. D. 1844, an execution was issued on the said judgment, directed to the sheriff of the county of Galveston; that said execution was received by the said sheriff as appears by endorsement thereon, on the 26th day of June, A. D. 1844, and levied on lot number 12 in block number 443, in said city, by direction of the plaintiffs in said execution; that said lot was advertised, and on the first Tuesday in October, 1844, offered for sale by said sheriff, and bid off by said plaintiffs in said execution, for the sum or amount of one hundred and thirty-five dollars, but that the said sale was abandoned, as appears by the return of the said sheriff, and no deed was made by him, said sheriff, to said lot.

And your orator further shows unto your honor, that after ascertaining the fact that the aforesaid levy and sale, or attempted sale, had been made, and before the issuing of any further or other execution upon the said judgment, your orator had a conversation with the said defendant, Thomas F. McKinney, one of the plaintiffs in said judgment, and in which conversation your orator expressly informed said McKinney of your orator's interest in the said lot, and in the lots mentioned and described in the certificates hereinbefore set forth, and distinctly told and repeated to the said McKinney that the said James S. Holden had no interest in the said lots otherwise than as a trustee for your orator; and also informed the said McKinney that the said certificates were in the office of the Galveston City Company, in the city of Galveston, and were in the possession of Gail Borden, the agent, who, your orator informed said McKinney, was knowing to the facts of the said Holman being the trustee for your orator, and of the circumstances under which the said trust had been created. And your orator then and there, in the city of Galveston, asked and requested the said McKinney to go with your orator to the office of the said company to see the said certificates and papers, and the said agent, Gail Borden, in order that he might satisfy himself of the facts of the case, and of your orator's interest and equities in relation to all of said lots, which the said McKinney then and there declined to do. And further, at the same time that the said McKinney and Williams, one or both were stockholders and directors in the said Galveston City Company, as your orator is informed, and believes to be true.

And your orator further shows unto your honor, that afterwards, to wit, on or about the 2d day of September, A. D. 1846, another execution was issued upon the said judgment against the said Hol-

man, to the sheriff of the said county of Galveston, and which was received by said sheriff on the 4th day of September, A. D. 1846, and by him levied on said lot number 5, in block number 617; on said lot number 11, in block number 617; on said lots 13 and 14, in block 380; on said lot number 12, in block 733; and on said lot number 11, in block 622, in the city of Galveston aforesaid, in accordance with the directions of the said Thomas F. McKinney, one of the said plaintiffs in execution aforesaid. That the said sheriff, on the 7th day of September, A. D. 1846, proceeded to advertise said lots for sale; that afterwards, on the 15th day of September, A. D. 1846, the said sheriff proceeded to levy upon said lot number 12, in block 443, in said city, the same being pointed out by the said Thomas F. McKinney, and that all of said lots were advertised to be sold by said sheriff at the court-house door, in the city of Galveston, in pursuance of said levy, on the first Tuesday in October, A. D. 1846.

And your orator further shows unto your honor, upon information and belief, the said defendant, Thomas F. McKinney, or the said McKinney & Williams, combining and confederating with one Pizarro Edmunds and others, whose names your orator cannot now state, but whose names, when discovered, your orator prays may be inserted herein, with proper and apt words to charge them in the premises, with a view to make a personal speculation to themselves, one or more of them, as a means to accomplish the same to delude and entice purchasers to bid on said property, by causing it to be believed that said lots were the property of said Holman, and to cloud, complicate, and embarrass the title and equitable interest of your orator to the aforesaid property, and to take and appropriate your orator's property by color of judicial proceedings against the said James S. Holman, who was at the time an insolvent judgment debtor, did, on or about the 1st day of October, A. D. 1846, induce the said agent of the Galveston City Company to give a certificate in the words and figures following, that is to say:—

"Office Galveston City Company, 1st October, 1846.

"I hereby certify that deeds were executed by the Galveston City Company to James S. Holman, bearing date fifth June, one thousand eight hundred and forty, for the following lots in the city of Galveston, to wit: In deed numbered 113, lots Nos. (5 and 11) five and eleven, in block number six hundred and seventeen (617); lot number twelve (12), in block number four hundred and forty-three (443); lot number eleven (11), in block number six hundred and twenty-two (622); lots numbers thirteen and fourteen (13 and 14), in block number three hundred and eighty (380); and lot number twelve (12), in block number seven hundred and thirty-three (733). And in deed numbered 114, lot number twelve (12), in block number six hundred and eighty-one (681); lot number thirteen (13), in block number six hundred and eighty-one; lot No. thirteen (13), in block No. six

hundred and seventy-one (671); and lot number thirteen (13), in block number four hundred and ninety-six (496). And I further certify that the said company has no claim whatever to the said lots, the amount of the purchase money for the same having been fully paid to the said company. In witness whereof I have hereunto set my hand and scrawl for seal the day and date first above written.

GAIL BORDEN, JR., [L. S.]
Agent for Galveston City Co."

Attest—J. A. SWETT,
P. EDMONDS.

And afterwards, on the 7th day of October aforesaid, the day of sale, did also procure said certificate to be recorded in the office of the clerk of the county of Galveston, the more effectually to deceive purchasers and to embarrass and injure your orator as aforesaid. And your orator insists that at the said time of taking the said certificates, and of the recording the same, the said Gail Borden, Jr., the agent of the said Galveston City Company, and the said Thomas F. McKinney, and the said McKinney & Williams, and their said agents and confederates, well knew and understood that the said lots and property levied on as aforesaid equitably belonged to your orator, and that the said Holman had no interest therein, or, if any, no other than that of a mere naked trustee for the benefit of your orator.

And your orator further shows that, on the day of the sale of the said lots levied on as aforesaid, but previous to the sale of the same, or any part thereof, but at the time they were offered by the sheriff for sale, your orator, by his agent, gave notice to the bystanders and bidders assembled that the lots offered for sale were the property of your orator, and that the sale of the same would be resisted; and further, your orator, by his agent aforesaid, at the time the said sheriff offered the said lots for sale, delivered a written notice to the said sheriff to be read, to the effect, that the said lots so levied on and offered for sale were the property of your orator, and that the said James S. Holman had no interest therein, and that any sale of the same upon said execution would be resisted by your orator; that the said sheriff immediately, previous to receiving bids on and for said lots and property, read in a loud and audible voice the said notice to the said bidders and bystanders so assembled, wherefore your orator insists that all persons engaged in the sale or purchase of the said lots had due and timely notice of the rights, interests, and equities of your orator in and to the same.

And your orator further shows unto your honor, that notwithstanding said notice, and knowledge of the said McKinney and confederates, the said sheriff, in pursuance of the directions of the said plaintiffs in execution, and their agents and confederates, proceeded to expose the said lots and property to sale as the property of the said James S. Holman, and that thereupon on the said 7th day of

October, A. D. 1846, said lot number 5, in block number 617, said lot number 12, in block 733, said lot number 12, in block number 443, and lot number 11, in block 622, were struck off and adjudged by the sheriff to said Thomas F. McKinney, for the sum of thirteen hundred dollars, that said lots were bid off by said McKinney by Pizarro Edmonds, agent, duly authorized in writing to act for said McKinney and plaintiffs in the premises, as appears by the return of the sheriff endorsed on said execution. That said lots number 13 and 14, in block number 380, were on said sale struck off and adjudged to Lewis Junaman, for the sum of one hundred and eighty-five dollars, for the former, by P. Edmonds, his agent, and two hundred dollars for the latter, bidding the same off in person; that said lot number 11, in block number 617, was struck off by said sheriff on said sale and adjudged to said Christian Deickman, for the sum of two hundred and five dollars, and further, that the proceeds of said sales were applied on the said execution.

And your orator further shows that after said sale and in pursuance thereof, to wit, on the tenth day of October, A. D. 1846, the said sheriff, Pryor Bryan, executed deeds for all of the said lots and premises so sold to the several and respective purchasers thereof, to wit, of lot number 5, in block 617, lot number 11, in block 622, lot number 12, in block 443, and lot number 12, in block 733, to Thomas F. McKinney, which said deed was recorded in the office of the clerk of the county of Galveston, on the 12th day of October, A. D. 1846, at one o'clock P. M.; of lot number 11, in block 617, to the said Christian Deickman, which was recorded on the 8th day of October, A. D. 1846, in the clerk's office in said county, and who is now in the possession of said lot No. 11, in block 617, with claim of title thereto.

And your orator further shows that said lot number 5, in block 617, was deeded by said Thomas F. McKinney to Joseph Osterman, by deed dated October 26, 1846, and was recorded October 27, 1846, that the said lot was deeded by Joseph Osterman to Antonio Officiers, late of the city of Galveston, deceased, by deed dated on the 15th day of January, and recorded on the 25th day of January, A. D. 1847. That subsequently the said Antonio Officiers departed this life at the city of Galveston aforesaid; that afterwards in a partition of the estate of the said Antonio Officiers, deceased, by a decree of the Probate Court of the county of Galveston, said lot number 5, in block 617, fell to said Antoniette, infant daughter of the said Antonio Officiers, deceased, in whom or in whose guardian the possession of the said lot now remains with claim of title thereto.

And your orator further shows that lot number 12, in block 733, was deeded by said Thomas F. McKinney to Joseph Osterman, by deed bearing date the 26th day of October, A. D. 1846, and recorded October 27th, 1846, and was deeded by said Osterman to Lemuel Smith, of the city of Galveston, by deed bearing date October 28th,

1846, and recorded October 31st, 1846, and who claims the right of possession and title thereto.

And your orator further shows that the said lot number 12, in block 443, was deeded by said Thomas F. McKinney to Mrs. Illies, wife of said John H. Illies, by deed bearing date the 19th day of October, 1846, and recorded the 20th day of October, 1846, and in whose possession the said lot now remains with claim of title thereto.

And your orator further shows that said lot number 11 in block 622, was deeded by said Thomas F. McKinney to said Joseph Osterman by deed bearing date the 26th day of October, and recorded the 27th day of October, 1846, and that the said Osterman now claims the right of possession in said lot and title thereto.

And further, that lots 13 and 14 in block 380 were deeded by said Junaman to William and J. J. Hendly, of the city of Galveston, and that your orator, in order to compromise the claim of the said Hendleys, and to save expensive and perplexing litigation, has necessarily been obliged to give and allow to the said Wm. and J. J. Hendley, a large sum of money, to wit, the sum of three hundred dollars, the payment of which has been inflicted upon your orator by the unjust proceedings on the part of the said Thomas F. McKinney and his confederates, as aforesaid.

And your orator further shows that the said Joseph Osterman, Christian Dieckman, Mrs. Illies, wife of the said John H. Illies, Antoniette Officiers and Lemuel Smith, respectively claim title to the respective lots so deeded, or in their respective possession adversely to your orator, and claim the several and respective lots to the exclusion of your orator's title and equitable rights, which your orator avers is contrary to equity.

And your orator further shows that the said William R. Baker is ready and willing to re-convey all or any of said lots to your orator, saving the objection to re-conveyance (as against possession held adversely); wherefore your orator prays that the said William R. Baker may be made a party to this suit in order that he may hereafter be required and permitted to make a re-conveyance of the said lots and property, in accordance with a decree of this hon. court.

To the end, therefore, that the said lots number 5 in block 617, lot number 11 in block 617, lot number 12 in block 443, lot number 11 in block 622, lot number 12 in block 733, may be decreed to be the property of your orator; that the said Galveston City Company may be decreed to make a title to your orator of the said lots, as well as to lots 13 and 14 in block 380; that the said Thomas F. McKinney or Samuel M. Williams, or either of them, or their confederates, or the confederates of either of them, may be precluded and forever enjoined from claiming or deriving any title or advantage by color of judicial proceedings under the aforesaid judgment against Holman, or the sales by virtue of execution thereon, and to the end, also, that the said defendants, Joseph Osterman, Mrs. Illies, wife of John H. Illies, Christian Dieckman, Antoniette Officiers, and Lemuel

Smith, may be decreed to deliver possession of the said several and respective lots respectively held in possession by them, or each of them; and that they may be forever respectively barred and precluded from setting up title to the said lots respectively, through the proceedings under the aforesaid judgment against the said James S. Holman, and also to re-convey the said lots respectively to your orator; and to the end, also, that the said William R. Baker may be permitted to release to your orator, and make a conveyance of all and any portion of said property, under the order and direction of this hon. court, all of which said relief is herein and hereby prayed for with costs of suit.

To the end, also, that in case your orator cannot have the relief hereinbefore prayed for, that your orator may be permitted to claim and insist upon alternate relief, and that the said Thomas F. McKinney and Samuel M. Williams, and their confederates, or the confederates of either of them, may be decreed to pay to your orator all sums of money and interest thereon, received as the proceeds of the sales under the judgment and proceedings thereon against the said Holman, as the proceeds of trust property, and that the said McKinney and Williams, and their confederates, may be decreed to have been and to have acted as the trustees of such proceeds for the benefit of your orator, and further, that they may be decreed to pay to your orator all such damages, costs, and expenses incurred and inflicted on your orator by their unconscionable acts and proceedings as aforesaid, in relation to the sale of your orator's property, the clouding and complicating your orator's title, and the conversion and attempted conversion of your orator's property as aforesaid for their own benefit, and that your orator may have such other and further and different relief as the nature of the case may require, all of which is herein and hereby prayed for with costs of suit.

And to the end also that the said Thomas F. McKinney may, if he can, show cause why the relief herein and hereby prayed for, or the said other and further and different relief should not be granted, your orator prays that the said Thomas F. McKinney may be required to answer upon his corporal oath the interrogatories appended to this bill of complaint, and numbered 1, 2, 3, &c.

May it please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this hon. court, to be directed to the said Galveston City Company, the said Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, Mrs. Illies, wife of John H. Illies, and her said husband, John H. Illies, Christian Dieckman, Antoniette Officiers, Lemuel Smith and William R. Baker, commanding them and each of them at a certain day and under a certain penalty therein to be limited, personally to be and appear before your honor in this honorable court, and then and there full, true and perfect answer make to all and singular the premises; and further to stand to, perform, and abide such further order, direction

and decree therein as to your honor shall seem meet. And your orator, &c.

HARVEY BALDWIN,
SHERWOOD & ABBOTT,
Solicitors, and of Counsel for Compl't, residing at Galveston.

On this 2d day of May, A. D. one thousand eight hundred and fifty, personally came before me Harvey Baldwin, the above named complainant, and who, being by me duly sworn, says that he has read the foregoing bill of complaint by him subscribed, that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

JOHN C. WATROUS.

The defendant, Thomas F. McKinney, is required to answer the following interrogatories, numbered 1, 2, 3, &c.:—

1st. Do you know the complainant, Harvey Baldwin, and how long have you known him?

2d. Do you know James S. Holman mentioned in the bill of complainant, and how long have you known him?

3d. Do you know Gail Borden, Jr., and how long have you known him?

4th. Are you at this time a stockholder in the Galveston City Company; and if so, how long have you been such stockholder, and during what time have you been a stockholder in said company? State particularly, and set forth your interest, or the interest held by you.

5th. Have you been a director in said Galveston City Company, and during what time and times have you been such director? State particularly, and set forth the date in full from the time of the organization of the said company.

6th. Is Gail Borden, jr., the agent of the said Galveston City Company, and during what time has he been such agent from the time of his first appointment? And state also in what manner he was appointed, and in what manner his appointment was continued from time to time. And who was the agent previous to his appointment, and during what time?

7th. At what place or places have the records of the Galveston City Company been kept, and where has the agent of the said company kept his office from time to time.

8th. Are you acquainted with the location of lots Nos. 5 and 11 in block 617, lot 12 in block 443, lots 13 and 14 in block 380, lot 11 in block 622, and lot 12 in block 733, in the city of Galveston mentioned in the bill of complaint?

9th. Did you at any time during the years 1844, 1845, or 1846, and previous to the 7th day of October, A. D. 1846, have a conversation with complainant, Harvey Baldwin, in relation to his, complainant's, ownership, or equitable interest, or claim to the lots mentioned in the 8th interrogatory?

10th. Did you have more than one conversation on the subject aforesaid during that time, and if so, how many? or if at any other time and where?

11th. If you had any conversation or conversations with the said Baldwin respecting the interest or ownership of the above lots, state the whole conversation; and more particularly, did the complainant, Baldwin, inform you that he purchased the certificates of the above lots; that the equitable interest was in him; that said James S. Holman was a trustee for him, said Baldwin, or had acted as such merely; that Gail Borden, Jr., the agent of said company, knew the facts and could give all the necessary information; that the papers, certificates, &c., were in the office of the said Galveston City Company, and whether the said complainant offered to go with you to the office of the said Galveston City Company to see the said certificates and papers, and said Borden, for the purpose of satisfying you respecting the said complainant's interest and the ownership of said lots.

12th. Did you decline to go with said complainant to the office of the Galveston City Company for the purpose mentioned in the last preceding interrogatory?

13th. Was lot number 12, in block 443, sold, or attempted to be sold, in the year 1844, on the judgment in favor of McKinney and Williams against James S. Holman, as mentioned in the bill of complaint? If not so, how otherwise, and what connection or agency had you in procuring the same to be exposed to sale as the property of said Holman?

14th. After the sale, or attempted sale, of said lot number 12, in block 443, and previous to the sale of the said lots above mentioned, on the first Tuesday of October, 1846, what remonstrances, if any, did complainant make to you against the sale of said lots mentioned in the bill as the property of James S. Holman? State particularly.

15th. Was Samuel M. Williams your co-plaintiff in the judgment against James S. Holman, a director in the Galveston City Company, in the years 1845 and 1846? and also a stockholder in said company?

SHERWOOD & ABBOTT, Solicitors,
And of Counsel for Complainant, residing at Galveston, Texas.

On the fly-leaf of said bill is an endorsement in the words and figures, to wit:—

Security for Costs.

United States District Court, District of Texas.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY, THOMAS F. MCKINNEY, SAMUEL M. WILLIAMS, JOSEPH OSTERMAN, and other Def'ts.

In Equity.

I, Horace Baldwin, of the city and county of Galveston, do

hereby acknowledge myself as security for costs on the part of complainant in the above entitled cause. Dated at Galveston, this 29th day of April, A. D. 1850.

Witness my hand and seal. H. BALDWIN. [L. S.]

Witness—LORENZO SHERWOOD.

And afterwards, to wit, on the same day and year, a subpœna in Chancery, directed to the Galveston City Company, issued from the clerk's office of our said court as follows, to wit:—

Subpœna for the Galveston City Co.

United States of America, District of Texas.

The President of the United States of America, to the Galveston City Company, greeting:—

You are hereby commanded to appear personally before the Honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, Lemuel Smith and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable John C. Watrous, Judge of said court and seal of court at the city of Galveston, this second day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed, is the return of the marshal in the words and figures following, that is to say:—

Marshal's Return.

Received May 2, 1850: executed May 3d, 1850, by serving Michel B. Menard, the president of the Galveston City Company, with a true copy of this subpœna, and by exhibiting to him this writ.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna issued from the clerk's office of our said court, directed to Thomas F. McKinney, which is in the words and figures following, to wit:—

Subpo. for Thomas F. McKinney.

United States of America, District of Texas.

The United States of America to Thomas F. McKinney, greeting: You are hereby commanded to appear personally before the Honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States at a court to be holden in the city of Galveston, in and for said district, on the first Monday in June next, then and there to answer a bill exhibited against you. The Galveston City Company, Samuel M. Williams, Joseph Osterman, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive when the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court and seal of court at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the marshal's return of said writ, which is as follows, to wit:—

Marshal's Return.

Received May 2, 1850, and executed May 13, 1850, by serving the said defendant, Thomas F. McKinney, personally, with above copy of this subpœna, and showing him the original.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna issued from the clerk's office of our said court, directed to Samuel M. Williams, in the words and figures following, to wit:—

Subpo. for Samuel M. Williams.

United States of America, District of Texas.

The President of the United States of America, to Samuel M. Williams, greeting:—

You are hereby commanded to appear personally before the honorable, the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first

Monday of June next, or wheresoever the said court shall then be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Joseph Osterman, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court and seal of court, at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the marshal's return of said writ, which is as follows, to wit:—

Marshal's Return.

Received May 2, 1850, executed May 3d 1850, by serving Samuel M. Williams the within named defendant personally with a true copy of this writ, and exhibiting to him this subpœna.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year a subpœna in chancery issued herein from the clerk's office of our said court directed to Joseph Osterman, which is as follows, to wit:—

Supo. for Jos. Osterman.

United States of America, District of Texas.

The President of the United States of America to Joseph Osterman, greeting:—

You are hereby commanded to appear personally before the honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden at the city of Galveston, in and for said district, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court and seal of court, at the city of Galveston, this second day of May, A. D. eighteen hundred and fifty, and the 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the clerk's office in the above entitled suit on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the marshal's return of said writ, which is as follows, to wit:—

Marshal's Return.

Received May 2, 1850, and executed May 3d, 1850, by serving the within named defendant, Joseph Osterman, personally, with a true copy of this writ, and exhibiting to him this subpœna,

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna issued from the clerk's office of our said court, directed to J. H. Illies and wife, which is in the words following, to wit:—

Subpœna for J. H. Illies and Wife.

United States of America, District of Texas.

The President of the United States of America, to John H. Illies and wife, greeting:—

You are hereby commanded to appear personally before the Honorable, the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said District, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, Christian Dieckman, Antoniette Officiers, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Galveston, the second day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the return of the marshal on said writ, which is in the words following, to wit:—

Marshal's Return.

Received May 2, 1850, and executed May 3d, 1850, by executing the within named defendant, John H. Illies, personally, with a true copy of this writ, and exhibiting to him their subpœna.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna was issued from the clerk's office of our said court directed to Christian Dieckman, which is in the words and figures following, to wit:—

Subpœna for Christian Dieckman.

United States of America, District of Texas.

The President of the United States of America, to Christian Dieckman, greeting:—

You are hereby commanded to appear personally before the honorable, the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden at the city of Galveston, in and for said District, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, John H. Illies and wife, Antoniette Officiers, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, judge of said court, and the seal of said court, at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the return of the marshal upon said writ, which is in the words and figures following, to wit:—

Marshal's Return.

Received May 2, 1850, and executed May 3, 1850, by serving the defendant C. Dieckman, personally, with a true copy of this subpœna, and exhibiting to him this writ.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna was issued from the clerk's office of our said court, directed to Antoniette Officiers, which is in the words and figures following, to wit:—

Subpo. for Antoniette Officiers.

United States of America, District of Texas.

The President of the United States of America, to Antoniette Officiers, greeting:—

You are hereby commanded to appear personally before the Honorable, the United States District Court, having and exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said District, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, John H. Illies, and wife, Christian Dieckman, Lemuel Smith, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court, and the seal of court at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday in June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the marshal's return of said writ, which is as follows, to wit:—

Marshal's Return.

Received May 2d, 1850, and executed May 3d, 1850, by exhibiting to the husband of Ann H. Seeling, who is the guardian of Antoniette Officiers, this writ, and by leaving him at her residence a true copy of the subpœna.

J. BATES, U. S. Marshal,
By J. BATES, Deputy Marshal.

And afterwards, to wit, on the same day and year, a subpœna was issued from the clerk's office of our said court, directed to Lemuel Smith, which is in the words and figures following, to wit:—

Subpœna for Lemuel Smith.

United States of America, District of Texas.

The President of the United States of America, to Lemuel Smith, greeting:—

You are hereby commanded to appear personally before the Honorable, the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said District, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, and William R. Baker, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court, and the seal of said court at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon is endorsed the return of the marshal of said writ, in the words and figures following, to wit:—

Marshal's Return.

Received, May 2, 1850. Not found. J. BATES, U. S. M.

And afterwards, to wit, on the same day and year, a subpœna issued from the clerk's office of our said court, directed to William R. Baker, which is in the words and figures following, to wit:—

Subpœna for Wm. R. Baker.

United States of America, District of Texas.

The President of the United States of America, to William R. Baker, greeting:—

You are hereby commanded to appear personally before the Honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you, the Galveston City Company,

Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, John H. Illies and wife, Christian Dieckman, Antoniette Officiers, and Lemuel Smith, by Harvey Baldwin, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, Judge of said court, and the seal of said court at the city of Galveston, this 2d day of May, A. D. eighteen hundred and fifty, and 74th year of the Independence of the United States of America.

[L. S.] JAMES LOVE, Clerk.

The defendant is required to enter his appearance in the above entitled suit in the clerk's office, on or before the first Monday of June next, otherwise the bill will be taken as confessed.

JAMES LOVE, Clerk.

And thereupon endorsed is the return of the marshal, in the words following, to wit:—

Marshal's Return.

Received May 2, 1850, not found. J. BATES, U. S. M.

And afterwards, to wit, at the June rules of said court, of the same year, to wit, on the third day of June of said year, the appearance was entered herein for Joseph Osterman, in the words and figures following, to wit:—

Appearance of Jos. Osterman.

HARVEY BALDWIN
vs.
The GALVESTON CITY COMPANY et al. } In Equity.

F. H. Merriman, solicitor, enters appearance for Joseph Osterman, one of the defendants in this cause.

F. H. MERRIMAN, Solicitor.

And afterwards, to wit, on the same day and year, an appearance was entered herein for Christian Dieckman, one of the defendants, which is in the words and figures following, to wit:—

Appearance of Christian Dieckman.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY et al.

M. M. Potter, solicitor, enters appearance for Christian Dieckman, one of the defendants in this cause.

M. M. POTTER, Solicitor.

And afterwards, to wit, on the same day and year at said June rules, A. D. 1850, appearance was entered herein for the Galveston

City Company, Samuel M. Williams, and Thos. F. McKinney, as follows, that is to say:—

Appearance of G. C. C. and McKinney and Williams.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others.

Jones, Butler, and Ballinger, solicitors of this court, enter their appearance for the Galveston City Company, Samuel M. Williams, and Thomas F. McKinney, three of the defendants, to the bill of complaint of Harvey Baldwin, against them and others.

And afterwards, to wit, upon the same day and year, a rule was taken herein by the complainant, which is in the words and figures following, to wit:—

Rule of Complainant.

HARVEY BALDWIN
vs.
The GALVESTON CITY COMPANY and others.

June 3d, 1850, Sherwood and Abbott, solicitors, etc.

The defendants, the Galveston City Company, Samuel M. Williams, and Thomas F. McKinney, having entered their appearance by Jones, Butler, and Ballinger, their solicitors, and the said defendant, Joseph Osterman, having entered his appearance by F. H. Merriman, his solicitor, and Christian Dieckman, having entered his appearance by M. M. Potter, his solicitor, ordered on motion of sol'rs for complainants, that the said defendants put in their respective answers by the next rule day, or that the bill of complaint in this cause be taken as confessed by them respectively.

And afterwards, to wit, on the same day and year, an appearance was entered herein for John H. Illies and wife, which is in the words and figures following, to wit:—

Appearance of J. H. Illies and Wife.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY et al. } In Equity.

Swett, Johnson and Howard, solicitors, enter their appearance for John H. Illies and wife.

SWETT, JOHNSON & HOWARD, Sol'rs.

And afterwards, to wit, on the same day and year the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY et al. } No. 57.

On motion it is ordered that Antoniette Officiers, an infant under the age of twenty-one years, and one of the defendants in this cause, make her appearance on or before the next rule day by her guardian ad litem, and that a copy of this order be served on Ann H. Seeling, her mother.

And afterwards, to wit, on the fourth day of June, of the same year, a copy of the foregoing order issued from the clerk's office of our said court as follows, to wit:—

Copy of Order.

United States District Court, District of Texas.

HARVEY BALDWIN, Compl't
vs.
GALVESTON CITY COMPANY et al.

June 3d, 1850.

On motion it is ordered that Antoniette Officiers, infant under the age of twenty-one years, and one of the defendants in this cause, make her appearance on or before the next rule day by her guardian *ad litem*, and that a true copy of this order be served on Ann H. Seeling, her mother.

United States District Court, District of Texas.

June 3, 1850.

I, James Love, clerk of the District Court of the United States for the District of Texas, certify that the foregoing is a true copy of an order entered upon the minutes in the above entitled cause on the 3d day of June, A. D. 1850.

In witness whereof I have hereunto subscribed my name as clerk aforesaid, and caused the seal of office to be affixed, this 4th day of June, A. D. 1850.

[L. S.] JAMES LOVE, Clerk.

The next rule day is the first Monday in July. J. LOVE.

And afterwards to wit, on the 5th day of June of said year, the marshal made return in said writ as follows, to wit:—

Marshal's Return.

Received June 5th, 1850, and executed on the 6th of June, 1850, by serving Ann N. Seeling with a certified copy of this order of court, and exhibiting to her the original at the residence of her husband.

J. BATES, U. S. Marshal,
By J. B. BATES, Deputy Marshal.

And afterwards, to wit, on the eighteenth day of June of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
THE GALVESTON CITY CO. *et al.* } 57.

On motion of counsel, it is ordered that the time for Christian Dieckman, one of the defendants in this cause, to plead, answer, or demur, be enlarged until the rule day in August next.

And afterwards, to wit, on the twenty-eighth day of June, of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
THE GALVESTON CITY CO. *et al.* } No. 57.

On motion of defendants' solicitor, it is ordered that defendants have leave until the rule day in August, to plead, answer, or demur to complainant's bill.

And afterwards, to wit, on the fifth day of August, of the same year, a demurrer was filed herein by the defendants, which is in the words and figures following, to wit:—

Demurrer.

In the District Court of the United States for the District of Texas, having and exercising the powers and jurisdiction of a Circuit Court of the United States.

The demurrer of the Galveston City Company, Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, Christian Dieckman, John H. Illies and wife, and Antoinette Officiers, by her guardian, E. H. Seeling, eight of the defendants to the bill of complaint of Harvey Baldwin, complainant.

The defendants, by protestation, not admitting or acknowledging any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged; doth demur in law to the said bill, and for cause of demurrer, showeth:—

First. That said complainant hath not by his said bill, made such a case as entitles him to any discovery or relief in a court of equity as against these defendants touching any of the matters therein complained of.

Second. The said complainant hath not in his said bill, at the foot

of the same, propounded any interrogatory or interrogatories to these defendants.

Third. That the complainant hath not in his said bill, alleged and set forth of what government he was a citizen at the time that he alleges that he acquired the alleged interest in the lots mentioned in his said bill of complaint.

Fourth. That it appears in and by said bill that James S. Holman is a proper and necessary party to the same, yet said Holman is not made a party.

Fifth. That it appears in and by said bill that Mosely, Baker, Michel B. Menard, W. and J. K. Allen, or his legal representatives, are proper and necessary parties defendants to the same, yet none of said persons are made defendants to said suit.

Sixth. That the legal title to the lots named in the bill, as alleged in said bill, is vested in William R. Baker, one of the defendants, and has never been conveyed by him to complainant, nor has a demand for the conveyance ever been made of the same as shown by said bill, and that the legal and equitable right to institute suit for said lots was vested in said Baker and not in the complainant.

Seventh. That these defendants are improperly joined as defendants with each other, and with the other defendants to said bill; in that said bill doth not show or state any privity of estate or person to exist between these defendants, and between these defendants and said other defendants, nor any just right on the part of complainants as against these defendants, and as against these defendants and said other defendants.

Eighth. That it appears by said bill that complainant's cause of action or suit, if any he ever had, is barred by the statute of limitations of Texas.

Wherefore, and for other divers good causes of demurrer appearing in said bill of complaint, these defendants do demur thereto, and pray judgment of this honorable court whether they shall be compelled to make any further or other answer to the same, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

F. H. MERRIMAN,
Solicitor and Counsel for Defendant Joseph Osterman.

J. A. SWETT,
Of Counsel for Defendant John H. Illies and wife, and E. H. Seeling, guardian, &c.

W. P. BALLINGER,
Solicitor and of Counsel for Galveston City Company, McKinney & Williams.

M. M. POTTER,
Solicitor and of Counsel for Defendant Christian Dieckman.

We certify, that in our opinion the foregoing demurrer is well founded in point of law.

F. H. MERRIMAN,
Solicitor for Defendant Jos. Osterman.

J. A. SWETT,
Of Counsel for John H. Illies and wife, and E. H. Seeling, guardian, &c.

W. P. BALLINGER,
Sol'r for Gal. C. C., and McKinney & Williams.

M. M. POTTER,
Solicitor and of Counsel for Ch. Dieckman.

District of Texas, ss.

Between HARVEY BALDWIN, complainant,
and
The GALVESTON CITY COMPANY and others, def'ts. } In Chancery.

We, Samuel M. Williams, Joseph Osterman, Christian Dieckman, The Galveston City Company, John H. Illies and Antoinette Officiers, by her guardian, E. H. Seeling, defendants in the above named cause, being on oath, make affidavit and say that the foregoing demurrer is not interposed for delay.

JOHN H. ILLIES.
SAM'L M. WILLIAMS.
CHRISTIAN DIECKMAN.
E. H. SEELING,
Guardian of Ant. Officiers.
JOSEPH OSTERMAN.
M. B. MENARD,
President C. C. C.

Sworn to and subscribed before me, this 5th day of August, 1850.
JOHN J. JONES,
Com. U. S. Dist. Court, Dist. of Texas.

And afterwards, to wit, at the November Rule of said court, a rule was taken herein by the defendants, which is in the words and figures following, to wit:—

Rule of Defendants.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others.

The complainant having failed to set down the demurrer of the defendants heretofore filed for argument, according to the rules of this court, ordered that his bill be dismissed.

MERRIMAN, POTTER, JOHNSON & SWETT,
JONES, BUTLER & BALLINGER,
Solicitors for Defendants.

And afterwards, to wit, on the 25th day of June, in the year of our Lord one thousand eight hundred and fifty-one, the court here made an order in this cause, as follows, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY et als.

On motion, it is ordered that the order dismissing this cause, taken at rules, be set aside.

And afterwards, to wit, on the twenty-fifth day of June, of the same year, a petition of complaint was filed herein, which is as follows, to wit:—

Petition of Complainants.

United States District Court, District of Texas, ss.

HARVEY BALDWIN, complainant,
vs.
THE GALVESTON CITY CO. and others, defendants.

To the Honorable the Judge of the United States District Court for the District of Texas, sitting in Equity. The petition of Lorenzo Sherwood, solicitor for complainant, respectfully showeth: that as solicitor for complainant, after service of processes he caused a motion to be made in this honorable court to the effect that Antoinette Officiers, an infant defendant, appear by her guardian *ad litem* by the next rule day, or that in default thereof that the court proceed to appoint a guardian *ad litem* for said infant, which motion was made on the rule day of June, A. D. 1850, and granted, as appears of record, with a further order that a copy of said rule or order granted by the court on the motion should be served on the mother of said infant. Petitioner further shows, that said infant is under fourteen years of age, that her mother and natural guardian is since dead, that she resides with E. H. Seeling, of the city of Galveston, the surviving husband of her late mother, that no guardian *ad litem* in this cause has been appointed by the court, and that no due appearance on the part of said infant has been entered in this cause. Wherefore, your petitioner prays that some responsible and discreet person may be appointed by this court as guardian *ad litem* for said infant. And your petitioner would nominate John S. Jones, Esq., deputy clerk of this court, who is competent, as petitioner believes, to take care of the interests of said infant. And your petitioner prays for any other order that may be necessary in perfecting the due appearance of said infant.

LORENZO SHERWOOD,
Dated June 25, 1851. Sol'r for Compl't.

Sworn and subscribed before me, this 25th day of June, A. D. 1851.
JOHN S. JONES, U. S. Commissioner.

And afterwards, to wit, on the twenty-sixth day of June of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
THE GALVESTON CITY COMPANY and others.

It appearing that Antoinette Officier, one of the defendants in this cause, is an infant under the age of fourteen years, that process has been duly served on her, that on the 3d day of June, A. D. 1850, an order on motion was entered to the effect that said infant defendant appear by her guardian *ad litem* before the next rule day, and that such order, or copy thereof, should be served on said infant's mother, Ann H. Sieling. And it further appearing that no appearance on the part of said infant has been made, in this cause, nor any appointment made by the court of a guardian ad litem in her behalf—

It is therefore hereby ordered, that unless the said infant defenddant, or some one in her behalf, shall procure the appointment of a guardian *ad litem* by the rule day in August next, and cause the appearance of said infant defendant to be entered in this cause by said rule day, that John S. Jones, Esq., be, and he is hereby appointed such guardian ad litem, and is directed to enter the appearance and conduct the defence of said infant, according to the rules and practice of this court, and it is further ordered, that a copy of this order on E. H. Sieling, who, it appears to the court, has the custody and care of said infant.

And afterwards, to wit, on the twenty eighth day of June, of the same year, a copy of said order was issued from the clerk's office of our said court, in the words and figures following, to wit:—

Copy of Order.

HARVEY BALDWIN
vs.
THE GALVESTON CITY COMPANY and others.

It appearing that Antoinette Officier, one of the defendants in this cause, is an infant under the age of fourteen years, that process has been duly served on her, that on the 3d day of June, A. D. 1850, an order on motion was entered to the effect that said infant defendant appear by her guardian *ad litem* before the next rule day, and that such order, or copy thereof, should be served on said infant's mother, Ann H. Sieling. And it further appearing that no appearance on the part of said infant has been made in this cause, nor any appointment made by the court of a guardian ad litem in her behalf—

It is therefore hereby ordered, that unless the said infant defendant, or some one in her behalf, shall procure the appointment of a guardian ad litem by the rule day of August next, and cause the

appearance of said infant defendant to be entered in this cause, by the next rule day, that John S. Jones, Esq., be, and he is hereby appointed such guardian *ad litem*, and is directed to enter the appearance, and conduct the defence of the said infant according to the rules and practice of this court; and it is further ordered that a copy of this order be served on E. H. Sieling, who, it appears to the court, has the custody and care of said infant.

I, James Love, Clerk of the District Court of the United States for the district of Texas, certify that the above is a true copy of an order in the above entitled cause, entered on the minutes of the court.

Given under my hand and the seal of court, this 28th day of June, A. D. 1851.

[L. S.] JAMES LOVE, Clerk.

And thereupon is endorsed the Marshal's return of said order, which is in the words and figures following, to wit:—

Marshal's Return.

Received June 28th, 1851, and executed on the same day by serving E. H. Sieling with a true copy of this order.

J. BATES, U. S. M.
By DAN. MARSTON, JR., Deputy Marshal.

And afterwards, on the seventh day of July of said year, to wit, at the July rules of said court, a rule was taken herein by the complainant, which is in the words and figures following, to wit:—

Rule of Complainants.

HARVEY BALDWIN
vs.
The GALVESTON CITY Co. and others. } July 7, 1851.

A demurrer on the part of the defendants having been put in to the bill of complaint, it is ordered that the said demurrer be, and the same is hereby, set down for argument at the next term of this court, to which this cause has been continued, by agreement or consent in court, excepting the demurrer purporting to have been put in by Antoinette Officiers, whose appearance has not been regularly entered. L. SHERWOOD, Sol'r for Compl't.

And afterwards, to wit, on the twenty-sixth day of February, of the year of our Lord one thousand eight hundred and fifty-six, the complainant filed herein an amendment to his bill, which is as follows:—

Amendment to Bill.

United States District Court, District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY Co. and others, Defendants. } In Equity.

And now, at this day, that is to say, the 23d day of February, A. D. 1856, comes the said complainant, and by leave of the court, after demurrer to the said bill of complaint, but before argument, makes the following amendments to said bill of complaint, that is to say:—

The Galveston City Company, by its proper officer or agent, is required to answer the following interrogatories, numbered 1, 2, and 3, etc:—

1st. What connection have you with the Galveston City Company, and how far are you conversant with the business of said Company?

2d. Look upon the bill of complaint down to and including folio 25, and say whether there are now remaining in the office of the Galveston City Company any such papers as are described in said bill, and state fully as to said papers, and the memorandums written on the same, and in whose handwriting said memorandums appear.

3d. If you state that there are any such papers, state how long they have been in the office of said Company, and under what circumstances they came to be deposited and filed there.

The defendants, Samuel M. Williams, Joseph Osterman, Mrs. Illies, wife of John H. Illies, and her husband, John H. Illies, Christian Dieckman, Lemuel Smith, Antoinette Officiers, by her guardian, and William R. Baker, are respectively required to answer the following interrogatories, numbered 1, 2, 3, &c.:—

1st. Do you claim any portion of the property described in the bill of complaint, and for which this suit is brought? The following is the property, that is to say, lots 5 and 11, in block 617; lot 12, in block 443; lot 11, in block 672; lots 13 and 14, in block 380; and lot 12, in block 732, in the city of Galveston.

2d. If you claim any of said property as owner, through whom do you claim?

LORENZO SHERWOOD,
Solicitor, and of Counsel for Complainant.

Copy of above acknowledged Feb. 26, 1856.
BALLINGER, Sol'r for Galv. City Co.

And thereupon, on the same day and year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY CO.

On motion of complainant's solicitor it is ordered that he have leave to file an amendment to his original bill, which was accordingly done.

And afterwards, to wit, on the eighteenth day of February, of the year of our Lord one thousand eight hundred and fifty-seven, an order was taken herein at chambers, which is in the words and figures following, to wit:—

Affidavit and Order.

United States District Court, District of Texas.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY and others,
Defendants.
} In Equity.

District of Texas, ss.

Lorenzo Sherwood, of said district, one of the solicitors for Complainant in the above cause, being duly sworn, says that Gail Borden, formerly agent of the Galveston City Company, is a material witness for the complainant in the above cause, and without whose testimony complainants cannot safely proceed to a trial or hearing of said cause; that said Borden is a single witness to many material facts coming to his knowledge as agent of said company, and necessary to be proved by the complainant in said cause; and further says that said Borden is now in the State of Texas, but that he is soon going out of the country, and in a few days, as deponent has been informed and believes to be true; that said Borden resides in the State of New York; that it is necessary that said Borden should be examined as a witness in the city of Galveston, where he can have access to the books and papers in the office of the Galveston City Company, the office of said company being kept in said city.

LORENZO SHERWOOD.

Sworn to and subscribed before me, this 18th day of February, A. D. 1857. JAMES LOVE, Clerk.

Let a commission issue to take the deposition of the above named witness, Gail Borden, in the above cause, upon written interrogatories, or upon verbal interrogatories, in case the parties agree to the same. It is hereby directed that said deposition be taken by and before Edward S. Austin, of the city of Galveston, who is hereby appointed to take said deposition.

Dated February 18th, 1857. JOHN C. WATROUS.

And upon the same day and year, a stipulation was filed herein, which is in the words and figures following, to wit:—

Stipulation.

United States District Court, District of Texas.

HARVEY BALDWIN, Complainant,

vs.

THE GALVESTON CITY COMPANY, THOMAS F. MCKINNEY, SAMUEL M. WILLIAMS, JOS. OSTERMAN, JOHN H. ILLIES and his wife, CHRISTIAN DIECKMAN, &c.

In Equity.

It is stipulated by the respective parties to this suit that Gail Borden may at any time hereafter, upon his return to Galveston, be examined as a witness de bene esse, on the part of complainant, before Edward S. Austin, the commissioner named in the order of the court, and also that said examination may be made and testimony taken on verbal interrogatories, the said commission to give due and timely notice to the solicitor of the Galveston City Company of the time and place of taking the deposition. It is further stipulated that said deposition or testimony may be taken, returned and filed either with or without a commission, at the option of complainant.

Dated February 19, 1857. L. SHERWOOD,
Sol'r for Compl't.

And afterwards, to wit, on the twenty-fifth day of May, of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. et al. } In Equity. 57.

On this day came on to be heard the demurrer of defendants to complainant's bill, and was argued by counsel. And after full consideration by the court, it is ordered that the demurrer be overruled.

And afterwards, to wit, on the fourth day of June, of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. et als. } No. 57.

On motion of counsel for defendants and for cause shown, it is ordered that defendants have until the first rule day in September next, to file their answers in this cause.

And afterwards, to wit, on the twenty-fifth day of August, of the same year, came Christian Dieckman and filed his answer herein, which is as follows, to wit:—

Answer of Christian Dieckman.

The United States of America, Eastern District of Texas. In Equity.

The several answer of Christian Dieckman, one of the defendants to the original and amended bill of complaint, wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants, taken at Galveston.

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said original and amended bill of complaint contained for answer thereunto unto so much and such parts thereof as this defendant is advised is more material or necessary for him to make answers unto, this defendant answering saith: That it is true as stated in the said original bill of complaint, that at the time of the filing of said original bill this defendant was in possession of and claimed title to lot number eleven in block number six hundred and seventeen in the city and county of Galveston, and from information received by this defendant since the filing of said original, he believes it to be true as stated therein that said complainant on the first day of January, 1839, received a certificate from the Galveston City Company acting by their agent, Levi Jones, for said lot together with others, upon and by virtue of which said certificate complainant was entitled to demand and receive a fee simple conveyance from said company for all of the lots mentioned therein, and by virtue of said certificate any assignee thereof under complainant was entitled to the like right under his own name and for his own benefit.

And that on the 4th day of June, 1840, said complainant assigned said certificate to Gail Borden, Jr., and that on the same day said Borden assigned said certificate to James S. Holman, but as to the trust charged in said original bill, to have been reserved in favor of complainant on the assignment of said certificate by him to said Borden, and by said Borden to said Holman; this defendant knows nothing, and has no information on the subject, and asks that strict proof may be required of complainant, in relation to the same. This defendant also admits and says that it is true as stated in said original bill, that Thomas F. McKinney and Samuel M. Williams obtained a judgment against said Holman, in the District Court of Harris County, in the then Republic of Texas, for the amount and at the time stated in said original bill, and this defendant says, upon information that he believes to be true, and therefore states the fact so to be, that execution regularly issued against said Holman, on said judgment, directed to the proper officer of said Harris County,

within one year from the time of the rendition of said judgment, and that said execution was returned unsatisfied, and without any money having been made thereon. And this defendant further says, that by force and virtue of said assignments on said certificates, said Holman became and was entitled to receive a conveyance or deed from said Galveston City Company, for all of the lots therein named. And this defendant says, upon information that he believes to be true, and therefore states the fact so to be, that said Galveston City Company, at the request of said Holman, did, after the assignment of said certificate to said Holman as aforesaid, and long previous to the 22d day of June, 1844, issue to said Holman, and deliver to him, the within deed and conveyance of said Company for said lot number 11, in block number 617; and the other lots in said certificate named in fee simple, and without any trust or reservation expressed or stated therein, in favor of said complainant or any other person, and said Holman thereupon surrendered and delivered up said certificate to said Company. And defendant admits it to be true, as stated in said original bill, that on or about the 2d day of September, 1846, an execution was issued on said judgment against said Holman, directed to the sheriff of said Galveston County, and which was received by said sheriff, on the 4th day of September, 1846, and was soon thereafter levied upon said lot number 11, in block 617, together with other lots, as the property of said Holman, and that all of said lots, including said lot number 11, in block number 617, were duly and properly advertised by said sheriff to be sold by him at the court-house door in said city and county of Galveston, in presence of said levy, on the first Tuesday of October, 1846. And defendant says, upon information that he believes to be true, and therefore states the fact so to be, that said property was levied upon as aforesaid under and by virtue of said execution as the property of said Holman, and that the same was duly and legally advertised for sale, to take place on the said first Tuesday in October, 1846, being the sixth day of said month. And defendant says that on said first Tuesday in October, 1846, the said property levied upon and advertised under and by virtue of said execution as aforesaid, was publicly offered for sale according to law by P. Bryan, the sheriff of said Galveston County, and that this defendant then and there became the purchaser of said lot No. 11, in block No. 617, and the same was then and there struck off and adjudged to this defendant by said sheriff, and for the price and sum of two hundred and five dollars, which said sum was more than the full appraised value of said lot, and was more than any other person did or would bid for the same, and defendant then and there paid the full amount of said purchase money of said lot to said sheriff, and thereafter, to wit, on the 7th day of said month of October, 1846, said P. Bryan, sheriff as aforesaid, in his official capacity as sheriff as aforesaid, made, executed and delivered this defendant a deed of conveyance for said lot, thereafter on the 8th day of October, 1846,

said Bryan acknowledging the execution of said deed, the same were authenticated for record, and on said last named day said deed was filed for record in the office of the clerk of the County Court of said Galveston County, and was there recorded on the 14th day of October, 1846, in Book "H," pages 6 and 7, as in and by said deed and the certificates of acknowledgment and filing thereunto attached, as also the certificates of recording, reference being thereunto had, when produced, will more full and at large appear. And this defendant says, upon information which he believes to be true, and therefore charges the fact so to be, that at the time of the issuance of said last named execution, and of the sale of said lot number 11, in block No. 617, in said city of Galveston, thereon, said judgment against said Holman was a valid and subsisting judgment, in full force, unappealed from, unreversed and unsatisfied, as will appear by a duly certified copy of the judgment and executions thereon issued when produced. And defendant is advised by counsel and believes and therefore so charges the fact to be, that said purchase made by him upon said execution issued upon said judgment, and the deed thereupon executed by said sheriff to him, for said lot No. 11, in block No. 617, vested a good and valid fee simple title to said lot in this defendant, and that such title now remains in him, and that said lot was legally subject to said execution at the time the same was levied thereon, and when said sale by said sheriff, and purchase by this defendant, took place. And this defendant says if any trust was reserved to, or in favor of complainant in said lot, as charged in said original and amended bill, the same was done secretly and without the knowledge of this defendant, and that at the time of the sale of said lot number 11, in block No. 617, by said sheriff as aforesaid, there was of record in the office of the clerk of the County Court of said Galveston County, an instrument or certificate executed by the proper agent of said Galveston City Company, showing that said lot and others mentioned in said original and amended bill, had been deeded to said Holman by said Company, and there was no deed or conveyance of record, or on file in the office of the county clerk of said Galveston County, from said Holman to said complainant, or any other person, for said lot No. 11, in block No. 617, and that as to the notice of any interest of said complainant in said property, as charged in the original bill to have been given at the time of said sheriff's sale, this defendant has no knowledge and did not know the same. That the German language is his mother-tongue, and at the time of said sale he understood the English language but imperfectly, and that if any such notice was given, which he neither admits nor denies, this defendant did not in anywise know or understand the purport, nature or effect of the same. And this defendant says that he made the purchase of lot number 11, in block 617 as aforesaid, in good faith, and with the firm belief that said lot at the time of said sale was the property of said Holman, and that such a public sale and purchase made under such circum-

stances would vest a good and perfect title to said lot in this defendant, and that acting upon such belief he immediately thereafter took possession of and fenced in and improved said lot, and has so continued in possession, use, and occupation of said lot from thence hitherto. And this defendant says that as to the matters stated in said original and and amended bill, in relation to the lots therein mentioned and described other than said lot number 11, in block 617, he knows nothing, except that he believes that they were sold by the sheriff of said Galveston County, on the same day and the same place as said lot No. 11, in said block No. 617, and this defendant says that he has no interest or connection with any of said other lots.

And this defendant further answering, by way of defence to said original and amended bill of complaint, says, upon information which he believes to be true, and therefore charges the fact so to be, that at the time said complainant acquired the pretended title and interest, attempted to be set up by him in said original and amended bill, to said lot number 11 in block No. 617, the now State of Texas was a separate and independent republican government, and that said complainant was then an alien to the government of said Republic of Texas, and was a citizen of and owed allegiance to the government of the United States of America, and that said complainant never was a citizen of said Republic of Texas. That the pretended title legal or equitable set up by complainant in said original and amended bill to said lot, if any such was ever made or acquired by him, was acquired by or made to complainant before the annexation of the said Republic of Texas, and was a fraud upon said constitution and laws. And this defendant asks that he may have the full benefit of said matter in his defence in said cause.

And this defendant further answering, by way of further defence to said original and amended bill of complaint, says, that at the time of filing said original bill in this honorable court, to wit, on the 2d day of May, A. D. 1850, this defendant was in the peaceable possession of said lot number 11 in block number 617 in the said original and amended bill mentioned and described under color of title, and that this defendant had so been in possession of this lot for more than three years last past previous to the said time of filing of said original bill in this honorable court, and that if said complainant ever had any cause of action against this defendant in said behalf, which is not admitted, the same accrued to said complainant more than three years previous to the filing to the said filing of said original bill in this honorable court. And this defendant insists upon the lapse of time as above stated, and as provided in and by the 15th section of an act of the Congress of the late Republic, now State of Texas, entitled "An act of limitation," approved February 5th, 1841, as a sufficient and valid defence to him herein. Said complainant not having been at any time within three years last past previous to the said filing of said original subject to any of the disabilities to sue, mentioned in said 10th section of said "Act of limitations."

And this defendant asks that he may have the full benefit of said defence in this cause.

And this defendant in further answer to the interrogatories propounded to him in and by said amended bill of complaint, answering says, in answer to the first interrogatory, that this defendant does claim to be the owner of lot No. 11 in block No. 617 in said interrogatory mentioned, and he does not claim any right or interest in any of the other lots mentioned in said interrogatory.

In answer to the second interrogatory, this defendant says, that he claims said lot No. 11 in block No. 617 as owner, by virtue of his purchase of the same at a sale made by the sheriff of Galveston County, State of Texas, on the first Tuesday in October, A. D. 1846, under execution issued from the District Court of Harris County on a judgment previous to that time rendered in said court in favor of Thomas F. McKinney and Samuel M. Williams against James S. Holman, said lot having been levied upon by said sheriff under and by virtue of said execution as the property of said James S. Holman, and the same having at said sale been struck off by said sheriff to this defendant as the highest and best bidder, and this defendant having then and there paid to said sheriff the amount of his bid for said lot. And this defendant also claims said lot by possession under color of title for more than three years next previous to the filing of said original bill of complaint in said cause.

And this defendant denies all, and all manner of unlawful combination and confederacy wherewith he may be in anywise in said original and amended bill of complaint charged, without this, that there is any other matter or thing in the said complainant's said original and amended bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, and denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be here dismissed with his reasonable costs and charges in this behalf most wrongfully sustained. CHRISTIAN DIECKMAN.

H. N. and M. M. POTTER,
Solicitors and of counsel for Christian Dieckman.

The United States of America, Eastern District of Texas.

I, Christian Dieckman, being duly sworn on oath say, that the foregoing answer has been carefully read over to me, and that I have examined the same, and that the matters and things therein stated as of my own knowledge I know to be true, and those stated upon information and belief I believe to be true.

CHRISTIAN DIECKMAN.

Christian Dieckman subscribed his name to the foregoing affidavit

in my presence, and swore to the truth of the matters therein stated before me, this 25th day of August, A. D. 1857.

JAMES LOVE, Master in Ch'y, U. S. D. C.

And afterwards, to wit, on the twenty-seventh day of August of the same year, came the defendant, Joseph Osterman, and filed his answer herein (with exhibits) which is in the words and figures following, that is to say:—

Answer of Joseph Osterman.

The United States of America, District of Texas, in Equity.

The separate answer of Joseph Osterman, one of the defendants, to the bill of complaint wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants, taken at Galveston.

This defendant, now and at all times saving and reserving to himself all benefit or advantage of exception which may be had or taken to the many manifest errors, uncertainties and imperfections in complainant's said bill of complaint contained, for answer thereto or to so much thereof as he is advised it is necessary or material for him to make answer unto, answering says:—

That it is true, as stated in the said bill of complaint, that at the time of filing the said bill, this defendant was in possession of and claimed title to lot number eleven in block number six hundred and twenty-two in the city and county of Galveston. That on the 26th day of October, 1846, this defendant purchased of Thomas F. McKinney, one of the defendants in said bill, by his deed of that date duly executed, lot number five in block No. 617, lot 12 in block 733, and lot 11 in block 622 named in said bill, and claimed by the complainant, and for which this defendant then paid a full and valuable consideration, to wit, the sum of six hundred dollars, all of which will appear by said deed duly recorded and acknowledged in Galveston County, and herewith filed marked Exhibit A, to which respondent asks leave to refer as often as may be necessary on the trial of this suit.

This defendant says that his grantor, said McKinney, acquired title to said lots by virtue of a deed executed by Pryor Bryan, sheriff of Galveston County, at the date of said deed, which said deed is dated the 10th day of October, 1846, and duly recorded in said county, which deed is herewith filed, marked Exhibit (B), to be used in evidence on the trial of said cause.

This defendant further says that said lots were levied upon and sold by said sheriff by virtue of an execution issued from the District Court of Harris County, in the State of Texas, upon a judgment rendered in said county, in favor of McKinney and Williams, who are both defendants in this suit, against James S. Holman, and which at the time of the issuance of said execution, and at the time of the levy and sale of said lots, was a subsisting and valid judgment

and lien on said lots, and never had been reversed, annulled, vacated, set aside, or satisfied; and this defendant believes it to be the same judgment referred to in the bill of complaint, but does not know the facts charged in the bill in relation to the *to the* executions previously issued, and the returns thereon, and therefore neither admits or denies the allegations concerning the same, but insists upon strict proof thereof.

This defendant admits that lot number 5, in block number 617, and lot number 12, in block 733, were sold and conveyed by this defendant, one, to one Antonio Officiers, and the other to Lemuel Smith, as charged in the bill of complaint, and defendant says that he conveyed said lots by quit claim deeds long before the institution of this suit, and before notice of the complainant's pretended claim, and at the time said suit was instituted, and ever since that time defendant had had no interest or claim to any of the lots named in the bill of complaint, except said lot number 11, in block 622.

Defendant admits that the certificates of the Galveston City Company for said lots number 5, in block 617, and lot 12, in block 733, and the assignments on said certificates are correctly set out in the complainant's bill. He also admits that the certificate of said Galveston City Company for lot number 11, in block 622, and the assignments on said certificate are as specified in a certified copy of said last named certificate herewith filed, marked (Exhibit C), and that complainant's bill describes the same correctly so far as it does not vary from said exhibit last above named, but as to the trusts charged in said bill to have been reserved in favor of said complainant upon the assignment and transfer of said certificates embracing lot 5, in block 617, and lot 12, in block 733, this defendant knows nothing, and neither admits nor denies such matter, and asks that strict proof may be required of the complainant in relation to the same. As to the allegations of the complainant that the certificate for lot 11, in block 622, was purchased by him from Mosely Baker, by agreement before the assignment and transfer to said Holman, and that said assignment and transfer was in trust for the benefit of said complainant, and that said Holman acquired no interest in said lot, but was a mere naked trustee for the benefit of complainant, and at the request of complainant, without consideration, assigned said certificate to Gail Borden, jr., as the trustee of complainant. This defendant does not know whether they are true or false, and knows nothing in relation to the transfers and assignments of the certificate for said last named lot, except what the assignments on said certificates show, and is entirely ignorant that any trusts existed in favor of the complainant in relation to any of said lots as charged in the bill of complaint. And defendant says that if any trust was ever reserved to or in favor of complainant in any of said lots as charged in said bill, the same was done secretly and without the knowledge of this defendant, and defendant had no intimation that such trusts were or would be claimed until after said sheriff's

deed, marked Exhibit (B), was executed, and defendant insists that said complainant be held to strict proof of the trusts set up in said bill. Defendant further says, that at the time said sheriff sold said lot as aforesaid, there was on record in the office of the county clerk of said Galveston County, an instrument or certificate executed by the agent of the Galveston City Company, showing that said lots, as purchased by this defendant as aforesaid, and other lots mentioned in said bill, had been deeded to said Holman by said Galveston City Company, and upon information which defendant believes to be true, he charges that said deed was so made and delivered to said Holman, as specified in said instrument, and there was no deed or conveyance of record in said county from said Holman to said complainant, or any other person, of said lots, and that as to the notice of any interest of said complainant in said property, as charged in said bill, to have been given at the time of said sheriff's sale, this defendant has no knowledge, and did not know of the same until long after the filing of the said bill. And this defendant says that he was an innocent purchaser of the said lots named in said deed marked Exhibit (A) for a full and valuable consideration, without notice of any interest or equity to the same in the complainant at the time of the sale of said lots by said sheriff, or in any other person in trust for the complainant. This defendant further says that since his purchase of said lots as aforesaid, he has expended upon said lot 11, in block 622, the sum of , which was spent and paid for taxes and necessary improvements upon said lot, and is an equitable charge upon the same in favor of said defendant, should the court, upon the proofs, judge the equitable title not to be in him. And should the court decree the title to said lots named in said deed, marked (A), to be in complainant, then this defendant asks of the court a decree and judgment against his grantee, said McKinney, for the purchase money named in said deed, with interest thereon, from the date of said deed. And the defendant further answering, by way of defence to said bill of complaint, says that upon information he believes, and therefore states the fact to be, that at the time said complainant acquired the pretended title and interest in said lots as charged in said bill, the now State of Texas was then a separate and independent republican government, and that complainant was then an alien to the government of said Republic of Texas, and was a citizen of the government of the United States of America, and owed allegiance to said United States; and that said complainant never was a citizen of said Republic of Texas, and that the pretended title, legal or equitable, set up by complainant in said bill to said lots, if any such was acquired by or made to said complainant, was so done before the annexation of the Republic of Texas to the said United States, and was done in violation of the constitution and laws of said Republic of Texas, and was a fraud upon said constitution and laws, and defendant asks that he may have the full benefit of this matter in his defence.

And this defendant further answering, by way of further defence to said bill of complaint, says, that at the time of filing said bill of complaint in this honorable court, to wit, on the 2d day of May, A. D. 1850, this defendant was in the peaceable and adverse possession of said lot No. 11, in block 622, in said bill mentioned and described under color of title, and a chain of title from and under the sovereignty of the soil; and that this defendant and his said grantor, under whom he claims, had so been in possession of said lot, using and improving the same under color of title for more than three years last past, previous to the said time of filing the said bill in this honorable court, and that if complainant ever had any cause of action against this defendant in said behalf, which is not admitted, the same accrued to said complainant more than three years previous to the filing of said bill. And this defendant insists upon the lapse of time as above stated, and as provided in and by the 15th section of an act of the Congress of the late Republic, now State of Texas, entitled "An act of limitations," approved February 5th, 1841, said complainant not having been at any time within three years last past, previous to the said filing of the said bill, subject to any of the disabilities to sue mentioned in said 15th section of said act of limitations, and defendant asks that he may have the full benefit of this defence in said cause.

And this defendant denies all and all manner of unlawful combination and confederation wherewith he may be in any manner in said bill charged without this, that there is any other matter in the said bill contained, material or necessary for this defendant to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

To the interrogatories propounded by the complainant to this defendant, in his amendment to the bill of complaint, this defendant answering, says. To the first int. he says. I claim lot 11, block 622, and was the owner of said lot at the time the bill of complaint was filed.

To the 2d int. he says. I claim my title to said lot through a deed made by Thomas F. McKinney, by me filed in this cause marked Exhibit (A), also through a sheriff's sale of said lot made by sheriff of Galveston County, by virtue of an execution issued by the clerk of the District Court of Harris County, upon a judgment obtained in said court by McKinney and Williams against James S. Holman, which execution was levied on said lot, and said lot was sold under said levy to Thos. F. McKinney, and for which he received said sheriff's deed.

JOS. OSTERMAN.

F. H. MERRIMAN,

Solicitor and Counsel for Joseph Osterman.

Personally appeared before me, this 27th day of August, 1857, Joseph Osterman, who signed the foregoing answer in my presence, and made oath before me, that the facts contained in said answer, so far as stated upon his own knowledge, are true, and so far as stated upon information, he believes the same to be true.

R. D. JOHNSON, U. S. Commissioner.

Exhibit A.

State of Texas, County of Galveston.

Know all men by these presents, that I, Thomas F. McKinney, of Galveston County, for the consideration of six hundred dollars to him paid by Joseph Osterman, of said county, have granted, bargained, sold, and released, and do hereby grant, bargain, sell, and release unto the said Joseph Osterman, his heirs and assigns, forever, the following described property, to wit: Lots number eleven (11), in block number six hundred and twenty-two (622); number five, in block number six hundred and seventeen (5 in 617); and number twelve (12), in block number seven hundred and thirty-three (733), being the same lots conveyed to said McKinney by P. Bryan, of said county of Galveston, which lots are lying and being in the city of Galveston, in the county and State aforesaid, together with all and singular the rights, members, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, to have and to hold all and singular the above-mentioned premises unto the said Joseph Osterman, his heirs and assigns, forever; and I do hereby bind my heirs, administrators, to warrant and forever defend all and singular the aforesaid premises unto the said Joseph Osterman, his heirs, executors, administrators, and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under me, the said McKinney. Witness my hand and seal (scrawl for seal), at Galveston, this 26th day of October, A. D. eighteen hundred and forty-six.

THOS. F. McKINNEY.

By his attorney, JAS. P. McKINNEY. [L. S.]

Witness—

JUL. FREDERICK,

P. EDMONDS.

State of Texas, County of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, P. Edmunds, who, being duly sworn, saith that James P. McKinney, attorney for Thos. F. McKinney, signed the foregoing deed in his presence, and acknowledged the same to be his act and deed for the purposes therein set forth, and he subscribed his name as a witness thereto. In witness whereof I hereto set my hand and seal of the County Court aforesaid this 27th Oct., 1846.

WM. H. SANDUSKY, Dep. Cl'k G. C. C. [L. S.]

State of Texas, County of Galveston. Recorder's Office, Galveston.

I, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, hereby certify that the within deed of conveyance was filed in this office for record 27th of Oct., 1846, at 3 P. M., and recorded 5th Nov., '46, at 1 P. M., in book F, pages 295 and 296.

[L. S.] In witness whereof I hereunto set my hand and the seal of the County Court this 5th day of November, Anno Domini, 1846.

WM. H. SANDUSKY, Dep. Cl'k G. C. C.

Exhibit B.

The State of Texas, County of Galveston.

Know all men by these presents, that I, Pryor Bryan, sheriff of the county aforesaid, in the said State, duly elected and commissioned for said office of sheriff, in and for the county of Galveston, by virtue of an execution to me directed from the office of the district clerk of the county of Harris, and State of Texas, bearing date the 2d day of September, A. D. 1846, and numbered 90, in favor of McKinney and Williams against James S. Holman, for the sum of three thousand two hundred and eighty-six $\frac{25}{100}$ dollars principal, two hundred and thirty-one $\frac{62}{100}$ dollars costs, damages, and twenty-four and $\frac{25}{100}$ dollars costs of suit, the same being pleas F. Fa., did, on the seventh day of September, A. D. 1846, at the instance of plaintiffs, levy upon the following described and specified property, situated in the city and county of Galveston, to wit: The several lots of ground known and described in the public plan and plat of the city of Galveston as lots numbers five and eleven (5 and 11), in block number six hundred and seventeen (617); lots numbers thirteen and fourteen (13 and 14), in block number three hundred and eighty (380); lot number thirteen (13), in block number six hundred and seventy-one (671); lot number twelve (12), in block number seven hundred and thirty-three (733); and lot number eleven (11), in block number six hundred and twenty-two (622). And also on the fifteenth day of said month of September, pointed out as above, upon lot number twelve (12), in block number four hundred and forty-three (443), as the property defendant in said execution, and the same having been duly and legally advertised by advertisements posted up in three of the most public places in the county of Galveston, viz., at the court-house door, at the Tremont House, and at the Verandah, for more than twenty days preceding the day of sale, and on the sixth day of October, it being the first Tuesday in said month, duly qualified appraisers were legally chosen to appraise the property levied upon as aforesaid, and after having been duly sworn, and having all the qualifications required by law, appraised the said property as follows, viz: Lot number 5, in block number 617, at the sum of two hundred dollars; lot number eleven, in the same block, at one hundred and fifty dollars; lot number 13, in block number

380, at one hundred and seventy-five dollars; lot number 14, said last mentioned block, at two hundred dollars; lot number 13, in block 671, at one hundred dollars; lot number 12, in block 733, at one hundred dollars; and lot number eleven, in block number 672, at seven hundred dollars; and lot number 12, in block 443, at three hundred dollars; and I, said sheriff, did, on the first Tuesday in October, A. D. 1846, offer and expose said property for sale in front of the court-house door, of the county of Galveston, within the hours prescribed by law, by offering each of said lots respectively for cash, with appraisement, the same being done in an open and public manner, as required by law, and four of said lots, to wit, lot number five (5), in block number six hundred and seventeen (617), lot number twelve (12), in block number seven hundred and thirty-three (733), lot number (11) eleven, in block number six hundred and twenty-two (622), and lot number twelve (12), in block number four hundred and forty-three (443), were struck off and by me adjudged to Thomas F. McKinney, of the county and State aforesaid, he being the highest and best bidder for the same, having bid the sum of thirteen hundred dollars, by P. Edmunds, agent, duly authorized in writing to act in the premises for said McKinney, said amount of thirteen hundred dollars being the appraised value of said property, which by law the same was required to bring if sold. Now be it known, that I, Pryor Bryan, the sheriff aforesaid, in and for the county of Galveston, State of Texas, do, by these presents, in consideration of the premises and the sum of thirteen hundred dollars to him charged, and by me credited upon said execution, he being one of the plaintiffs in the same, grant, bargain, sell, and release unto the said Thomas F. McKinney, his heirs and assigns, all the right, title, and interest that the aforesaid James S. Holman had at the time that the said execution was levied upon said property, in and to the aforesaid specified and described lots of ground, situated in said county, together with all and singular the appurtenances thereunto belonging, to have and to hold the said lots of ground, in the county aforesaid, to the said T. F. McKinney, his heirs and assigns, forever, as fully and completely as I, the said Pryor Bryan, sheriff as aforesaid, can convey the same by virtue of the proceedings had in the premises under said execution, and by virtue of my office of sheriff aforesaid.

In testimony whereof I, the said Pryor Bryan, in my said capacity of sheriff, in and for the county of Galveston, have hereunto set my hand and affixed my seal, using a private seal (having no seal of office), in the city of Galveston, this 10th day of October, A. D. 1846.

P. BRYAN,
Sheriff of Galveston Co., State of Texas. [L. S.]

State of Texas, County of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, P. Bryan, sheriff

of Galveston County, who acknowledged that he signed and executed the foregoing deed for the purposes therein set forth.

Given under my hand and the seal of the County Court of Galveston County, this 20th day of Oct., 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

State of Texas, County of Galveston.

I, Wm. H. Sandusky, deputy clerk of the County Court aforesaid, certify that the within deed was filed in this office, 12th Oct., '46, at 1 P. M., and recorded 23d Oct., '46, at 10 A. M., in book H., pages 10 and 11.

Given under my hand and the seal of the County Court aforesaid, this 23d day of October, 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

Exhibit C.

No. 364. Certificate of purchase in Galveston City: I, Gail Borden, Jr., agent for the Galveston City Company, do hereby certify that Mosely Baker, having become the purchaser of one lot in said city, viz., number eleven (11), in block six hundred and twenty-two (622), for the sum of ten hundred and twenty-five ($1025) dollars and cents, and having on his part complied with the terms of sale as prescribed by the Board of Directors, is entitled to receive a conveyance for said lot under the orders of the Board (with a lien upon the said lot for the payment of his notes), so soon as the company are prepared to execute deeds in proper form.

Witness my hand this 5th day of May, A. D. 1840.

G. BORDEN, JR.,
Agent for the Galveston City Co.

Signed in presence of

Endorsed on the back of the above as follows:—

For value rec'd, I hereby transfer all my right and title to the within certificate and the premises therein mentioned to James S. Holman, and request title to issue to him, or to his order, without lien.

Dated May 20, 1840. MOSELY BAKER. [L. S.]

In presence of
A. C. ALLEN,
WM. H. JACK.

For value rec'd, I hereby transfer all my right and title to the within certificate and the lot therein mentioned to Gail Borden, and request a deed to issue to him without lien as aforesaid.

JAMES S. HOLMAN.

Witness,
E. J. REDOUT,
M. B. MENARD.

For value received, I hereby transfer all my right, title and interest in and to the within mentioned lot to James S. Holman, his heirs and assigns, and I authorize the Galveston City Company to make title to him or them. G. BORDEN, JR.

Witness,
E. J. REDOUT.

Office Galveston City Co., Galveston, July 3d, 1850.

I hereby certify the foregoing two pages to be a true copy of the original certificate of purchase and the assignments thereon, the same being the voucher upon which a deed was made to James S. Holman for lot number eleven, in block No. 622, on the 5th June, 1840, all which appears from the certificate and books of this office.

In evidence whereof I have signed this and affixed the seal of the company, on the day and date above written.

[L. S.] JOHN P. BORDEN, Acting Agent.

And afterwards, to wit, on the fifth day of September, of the same year, a replication was filed herein by the complainant to the answer of Dieckman as follows, to wit:—

Replication to Answer of Dieckman.

United States District Court, District of Texas. In Equity.

The exception and replication of Harvey Baldwin, complainant, to the answer of Christian Dieckman, defendant:—

And the said Harvey Baldwin, complainant, now here excepts to all that part of the said answer of Christian Dieckman which sets up that said complainant was not a citizen of the republic of Texas, and wherein it was alleged that said complainant was a citizen of and owed allegiance to the United States, said allegations in said answer being immaterial and designed to form an immaterial issue, and prays that the same may be stricken out.

And this repliant, Harvey Baldwin, saving and reserving unto himself all and all manner of benefit and advantage of exception to the manifold insufficiencies of the balance of said answer for replication, thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing in said answer contained material and effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this hon. court should direct, and humbly prays as in and by his said bill he has already prayed.

SHERWOOD & GODDARD,
Solicitors, and of Counsel for Compl't.

And afterwards, to wit, upon the same day and year, the com-

plainant filed his replication herein, to the answer of Joseph Osterman, which is in the words and figures following, to wit:—

Replication to Answer of Jos. Osterman.

United States District Court, District of Texas. In Equity.

The exception and replication of Harvey Baldwin, complainant, to the answer of Joseph Osterman, defendant, and the said Harvey Baldwin, complainant, nowhere excepts to all that part of the said answer of Joseph Osterman, which sets up that said complainant was not a citizen of the Republic of Texas, and wherein it was alleged that said complainant was a citizen of and owed allegiance to the United States, said allegations in said answer being immaterial, and designed to form an immaterial issue, and prays that the same may be stricken out.

And this repliant, Harvey Baldwin, saving and reserving unto himself all and all manner of benefit and advantage of exception to the manifold insufficiencies of the balance or remaining part of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of said defendant is uncertain and untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained, material and effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this hon. court shall direct, and humbly prays as in and by his said bill he hath already prayed. SHERWOOD & GODDARD,

Solicitors, and of Counsel for Complainant.

And afterwards, to wit, on the fifteenth day of November, of the same year, came John H. Illies and wife, and filed their answer herein, which is in the words and figures following, to wit:—

Answer of John H. Illies and Wife.

The United States of America, District of Texas. In Equity.

The answer of John H. Illies, and Malvina C. Illies, his wife, two of the defendants, to the bill of complaint wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants, taken at Galveston.

These defendants now and at all times saving and reserving to themselves all benefit and advantage of exception which may be had or taken to the many manifest errors, uncertainties and imperfections in said complainant's bill of complaint contained, for answer thereto, or to so much thereof as they are advised it is necessary or material for them to make answer unto, answering do say:—

That it is true, as stated in the said bill of complaint, that at the time of filing said bill these defendants were in possession of and claimed title to lot numbered twelve (12) in block number four hun-

dred and forty-three (443) in the city and county of Galveston. That on the 19th day of October, A. D. 1846, these defendants purchased of Thomas F. McKinney, one of the defendants hereto, by his deed of that date duly executed, said lot named in said bill and claimed by complainant, and for which they paid a full and valuable consideration, to wit, the sum of three hundred dollars, all of which will more fully appear by said deed duly acknowledged and recorded in the office of the county clerk of the county of Galveston, herewith filed, marked "Exhibit A," and to which these defendants crave leave to refer as often as may be necessary on the trial of this cause. These defendants further answering say, that their grantor, the said McKinney, acquired title to said lot by virtue of an execution directed from the District Court of the county of Harris to Pryor Bryan, sheriff of the county of Galveston, which said execution was issued, as these defendants are informed and believe, at the time and for the amount stated in said complainant's original bill of complaint upon a valid and subsisting judgment rendered in said District Court in favor of Samuel M. Williams and Thomas F. McKinney against James S. Holman. That the said Pryor Bryan, by virtue of said judgment and execution, did proceed to levy on said lot number 12 in block No. 443, as the property of the said James S. Holman, and after due compliance with the requirements of the law in that behalf, on the first Monday in October, 1846, being the sixth day of said month, he the said sheriff exposed the same for sale, in front of the court-house door of said county, when and where the said Thomas F. McKinney became and was declared to be the purchaser of said lot, he being the highest and best bidder therefor. That thereafter, to wit, by his deed dated the 10th day of said month and year and duly recorded, the said sheriff conveyed said lot in fee simple to said Thomas F. McKinney. To all of which, the aforesaid judgment and the proceedings had thereon, the execution or executions thereupon issued and the deed of said sheriff, these defendants beg leave to refer as often as it may be necessary upon the trial of this suit.

These defendants further answering, admit that the complainant herein received from the Galveston City Company a certificate for said lot No. 12 in block 443, together with others mentioned in said certificate, which they believe to have been dated 1st of January, 1839, and there afterwards, to wit, on the fourth of June, 1840, assigned by the complainant to Gail Borden, and on the same day assigned by said Borden to said James S. Holman. And these defendants say, that as to any trust or reservation in the transfer and assignment made by complainant to the said Gail Borden of said lot, in the certificate of title therefor, or in the transfer or assignment thereof by said Borden to the said Holman, which was to enure or in any manner accrue to the benefit of the complainant, they are wholly and entirely in ignorance of, and insist upon strict proof of the same. That if any such charge, trust, reservation or understanding in fact ever existed it was without the knowledge of these defendants, and

was, as they believe now, and so charge, if as stated in complainant's bill, done covertly and by private agreement and with the view and intent to cover up and secrete property claimed by complainant from his creditors, which said agreement, trust or reservation, if existing at all, was in fraud of his the complainant's said creditors and of all purchasers under said Holman.

These defendants further answering say, that at the date of the said sheriff's deed hereinbefore referred to, there was an instrument on record in the office of the county clerk of the county of Galveston executed by the agent of the Galveston City Company, certifying that said lot, with others named in said certificate, had been deeded by said company to said Holman, and they charge, upon information which they believe to be true, that said property mentioned in said certificate, embracing lot No. 12 in block No. 443, was in fact deeded to said Holman, without lien, charge or incumbrance upon record, and without any trust, reservation or equitable claim upon the same or any part thereof, either in favor of complainant or any other person. And these defendants say, that as to any notice having been given upon the day of sale of said property, as to any interest of complainants therein, as charged in his bill, they had no knowledge of the same, but were innocent purchasers of said lot, without notice of any claim or interest of complainant therein, either legal or equitable. That they paid a full and valuable consideration therefor, and have since that time paid, laid out and expended upon said lot in the way of taxes to the city and county of Galveston and to the State of Texas, also for improvements made upon said lot, the sum of , which they say are equitable charges upon the same, in case the court should upon the proofs adduced upon the trial of this cause adjudge the title to be in said complainant. And defendants pray the court, that should the title to said lot No. 12 in block No. 443 be adjudged to be in complainant, to order and decree that they have a judgment against Thomas F. McKinney, one of the defendants hereto, for the purchase money paid by them to said McKinney for said lot, with interest upon the same from the date of said purchase. And these defendants further answering, by way of further reference to said bill of complaint, do say, that at the time of filing said bill in this honorable court, to wit, on the 2d day of May, A. D. 1850, these defendants were and had been in the peaceable, adverse and unmolested occupation and enjoyment of said lot No. 12 in block No. 443 in said bill mentioned, by themselves and their grantor, under color of title for more than three years next preceding the filing of said bill, and that if complainant ever had any cause of action against them herein, the same accrued to said complainant more than three years previous to the filing of his said bill of complaint. And these defendants insist upon said lapse of time and rely upon the same as in such case provided in and by the 15th section of an act of the Congress of the late republic, now State of

Texas, entitled "An act of limitations," approved February 5th, 1841, as a valid and sufficient defence for them herein.

To the interrogatories propounded by complainant to these defendants in his amended bill of complaint, these defendants answering say to the 1st interrogatory, that they claim lot No. 12 in block 443, and owned the same at the time the bill was filed.

To 2d. That they claim their title to said lot through a deed from Thomas F. McKinney, filed herein, marked "Exhibit A," also through a sheriff's sale of said lot, made by the sheriff of Galveston, by virtue of an execution issuing from the District Court of the county of Harris, which is and was a court of general jurisdiction, upon a judgment obtained in said court in favor of McKinney and Williams, against James S. Holman, which execution was levied upon said lot, and under which said lot was sold to Thomas F. McKinney, and for which he received the sheriff's deed. And these defendants claim no right, interest, or title, to any other of the lots mentioned in the interrogatory of complainant.

And the defendants deny all and all manner of unlawful combination and confederacy wherewith they may be in anywise charged in the said original bill and amended bill of complaint, without this, that there is any other matter or thing in the said complainant's said original and amended bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants, are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN H. ILLIES,
M. C. ILLIES.

R. H. HOWARD,
Solicitor and of Counsel for John H. Illies and Wife.

Personally appeared before me John H. Illies and Malvina C. Illies, who subscribed in my presence the foregoing answer, and who being by me duly sworn, do severally depose and say that the matters and things therein stated as upon their own knowledge are true, and those stated upon the information of others they believe to be true.

November 5th, 1857. R. D. JOHNSON,
U. S. Commissioner.

And afterwards, to wit, on the twenty-third day of November, of the same year, the court here made an order in chambers in this cause, which is as follows, to wit:—

Order of Court.

District Court of the United States, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
GALVESTON CITY CO. and others, Defendants.

It is hereby ordered that the respective parties in the above cause, in addition to the testimony by deposition, may respectively take testimony viva voce, at the trial or hearing.

JOHN C. WATROUS, Judge.

And afterwards, to wit, on the first day of April, of the year of our Lord one thousand eight hundred and fifty-nine, the answer of Antoniette Officier was filed herein in the words and figures following, to wit:—

Answer of Antoinette Officier.

The United States of America, District of Texas. In Equity.

The answer of Antoinette Officier, by her guardian ad litem, John S. Jones, one of the defendants, to the bill of complaint wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants.

This defendant, now and at all times reserving to herself all benefit or advantage of exception which may be had or taken to the many manifest errors, uncertainties or imperfections in said complainant's bill of complaint contained, for answer thereto, or to so much thereof as she is advised it is necessary or material for her to make answer unto, by her guardian as aforesaid, answering does say:—

That she knows nothing of the equities set up in the plaintiff's bill of complaint upon which he seeks relief, nor whether the statements therein contained are true or false, but insists upon strict proof of the same. Further answering this defendant says that she claims lot number 5, in block No. 617, by virtue of her heirship of Antonio Officier, deceased, the father of this defendant, who in his lifetime purchased said lot from Joseph Osterman, who purchased the same from Thomas F. McKinney, who purchased the same at sheriff's sale, under a judgment rendered in the county of Harris, and levy and sale of the same as the property of James S. Holman. This defendant further answering says that she hereby refers to the answer of Joseph Osterman, one of her co-defendants herein, heretofore filed in this cause, and adopts and makes said answer her own in so far as the same is applicable. And further answering she submits that she is an orphan minor, and that she commits her interests to the tender consideration of the court, praying your honor to give to them such protection as the nature of the case may admit, and the equitable powers of the court can grant. J. ANTOINETTE OFFICIER,

By her Att'y *ad litem* JOHN S. JONES.

And afterwards, to wit, upon the tenth day of May, of the same year, came Thomas F. McKinney and filed his answer herein, which is in the words and figures following, to wit:—

Answer of Thomas F. McKinney.

The separate answer of Thomas F. McKinney, defendant, to the bill of complaint filed against him and others in the District Court of the United States for the Eastern District of Texas, at Galveston, number 57 on the docket of said court.

This defendant saving and reserving, &c., makes answer to the interrogatories propounded to him, as follows:—

To the 1st. I do, probably twenty years.

To the 2d. I do, still longer.

To the 3d. I do, probably twenty-five years.

To the 4th. I am not; I was a stockholder from the origin of the company until some eight years ago; the amount of my interest varied so much that I cannot undertake to answer the question.

To the 5th. I have been; the books will show the dates; I cannot recollect.

To the 6th. He is not at the time I answer; he was when the question was propounded, and had been for many years; Dr. Levi Jones was the agent previous to him; as to dates and mode of appointment I beg leave to ask a reference to the books of the Company.

To the 7th. At Gail Borden's house; at a house which stood in the rear of Davies' brick store, now burnt up; at Dirs' brick store; at their present place and doubtless at other places, but I don't call them to mind and cannot give dates, not deeming it material so to do, and knowing far more accurate proof can be made by others.

To the eighth. I know that 12 in 443 is in the Tremont block; by reference to the city map, I could doubtless fix the locality of the others, but cannot without reference to the map, and beg that it may be taken to show said localities.

To the ninth. I had conversations with said Baldwin in relation to the matter, but in what year, and whether before the date mentioned, I cannot remember. My best recollection is that it was after that date, but I am by no means positive.

To the tenth. I cannot gives dates. I had several conversations with said Baldwin.

To the eleventh. I have no recollection of the details of said conversations. I know that said Baldwin claimed that the lots belonged to him and not to Holman, and talked to me a great deal about the matter. How he claimed the title, or what the particulars of the controversy as to title were, I cannot recall to mind. I had no interest in the matter. Gave little attention to it. I do remember his wanting to go to the office of the City Company and see the agent and examine the papers; but as I said, my memory does not supply me with what he wished to show. I do not deny but what the ques-

tion may state the matter correctly, but I am wholly unable to recall particulars.

To the twelfth. I did.

To the thirteenth. I prefer that the records should answer as to levies, dates, &c., my memory does not. The judgment on which the sale was made did not belong to McKinney and Williams. The note belonged to Mrs. Toby, of New Orleans. I handed it to Love & Reily, lawyers at Houston, for collection in the name and for account of Mrs. Toby, and took their receipt to her. They got judgment in the name of McKinney and Williams, but without our knowledge or consent. I knew nothing of it until afterwards. Pizaro Edmunds came to me and said he knew of property belonging to Holman out of which the debt, or part of it, could be made. Being Mrs. Toby's friend, and the debt a bad one, I told him he should have half of what he could make out of it. He controlled the execution—the levy was directed by him; I had no personal agency in the matter.

To the fourteenth. It is possible that the conversations, or some of them, which I had with Baldwin, and have referred to in my answer to the 11th interrogatory, may have taken place between the times mentioned. My own memory does not even furnish the recollection of a previous effort to sell the lot mentioned. I know there was a sheriff's sale, but was not at it. My present impression of Baldwin's conversation is, that the sale had already taken place, but if there was a previous levy it may have been subsequent to that. I cannot state with certainty, nor can I state more fully what was said.

To fifteenth. He was a director and also stockholder, but at what dates I cannot say; the books will show. He had no interest in the judgment, and I have no idea that he had any knowledge of the recovery or of the proceedings by execution.

And this defendant further answering says, the said judgment against said Holman recovered in the Harris County District Court, was the property of Mrs. Toby, of New Orleans, and was recovered by the attorneys in the name of McKinney & Williams, as stated in answer to the 13th interrogatory, without their knowledge and permission, and without any interest on their part. That said Edmunds came to this defendant and said he knew of property belonging to said Holman, out of which said debt or part of it could be collected, and made by execution. That this defendant being the friend of Mrs. Toby, and considering the debt to be a bad one, agreed with said Edmunds that he should have the half of what he could make on execution. That the execution was issued at the direction of said Edmunds, the property pointed out by him, that the lots bought in in the name of the defendant were all bought in by said Edmunds, and were all again sold by said Edmunds. That the half of proceeds of said sales was remitted and paid over to Mrs. Toby, and the other half retained by said Edmunds. That neither McKinney and Williams, or either of them, had one cent of interest in the said judgment, or received for their or either of their own benefit one cent of the pro-

ceeds of sales. The defendant believes that said Williams was a stranger to the judgment and all the proceedings; and as to defendant his only connection with the matter was to represent Mrs. Toby's interests in agreeing to give the half which could be made by execution, and in permitting the use of his name by said Edmunds as aforesaid. But defendant did not attend the sale, or make sale of any of the lots, or take any further action in the premises.

This defendant did believe, from his opinions of said Baldwin and Holman, and from the facts of the matter as he heard and understood them, that the property was liable to execution, and that the claim by said Baldwin was not well founded and in good faith, but he cannot now remember the details as to title, or the grounds of the controversy; that having no personal interest, and taking no personal part in the matter, he took but little interest in any part of the transaction.

Defendant does not consider himself obliged, in order to defend himself herein, to aver or prove that the title of said Holman was in fact good to said lots, but he prays to be at free liberty to do so should it be deemed material for his defence. This defendant disclaims all interest in the matter in controversy, or any part thereof, and as to the claim of complainant for a money decree by way of alternative relief, against McKinney and Williams, or this defendant, he says that said complainant's cause of action therefor, if any he ever had, accrued more than four years before the commencement of this suit, and defendant pleads and insists that the same is barred by the 1st section of the act of limitations, approved Feb. 5, 1841, and defendant relies upon and pleads both the lapse of four years and of two years since the accrual of said cause of action as a bar to the further prosecution thereof. And defendant denies positively that he occupied any trust relative to said Baldwin. He says that the proceedings under said execution, and the sales complained of, and the acts of this defendant, both by himself and by said Edmunds (so far as said Edmunds could be considered to have acted for him), were all openly and notoriously adverse to said Baldwin, as was well known to him at the time and ever since.

This defendant further denies all charge of fraud wherewith he or said McKinney and Williams are charged in said bill. He denies all interest in the matter, or that he derived any benefit therefrom. He believed in good faith that the property was liable to execution, and that it did not belong to said Baldwin, and he was desirous of seeing Mrs. Toby realize as much of her said debt as possible, and he denies that he did anything in the premises inconsistent with entire good faith and propriety in the premises.

This defendant further says that he is improperly made a party to this suit; that the joinder of this defendant with the other defendants, and the relief sought against this defendant, renders said bill multifarious as to this defendant, and he prays to have the same advantage therefrom as if taken on demurrer.

He says further that the said bill shows no equity against this defendant, and no ground or cause for relief against him, and prays the same advantage from this defence as if taken on demurrer.

And having fully answered, he prays to be hence dismissed with his costs, &c.

I, Thomas F. McKinney, the foregoing defendant, swear that what is contained in this my answer, so far as my own act and deed, is true, and that what relates to the act and deed of any other person or persons, I believe to be true.

THOS. F. McKINNEY.

Subscribed and sworn to before me July 29, 1858.
THOS. M. JACK, Ch. Justice Galveston Co.

And afterwards, to wit, on the same day and year, an agreement was filed herein, which is in the words and figures following, to wit:—

Agreement of Counsel.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY,
McKINNEY & WILLIAMS, & others.
} In Chancery. No. 57.

U. S. District Court, Galveston.

By agreement of parties, the answer of Thomas F. McKinney is this day filed, and the cause stands revived against Philip C. Tucker and Wm. H. Williams, administrators of the estate of Samuel M. Williams, deceased; and the said answer of McKinney shall stand for and be considered as the answer also of said Williams as if originally made and sworn to by him in his lifetime. All formal proceedings for said revivor are waived, and the said parties agree that the cause may proceed to hearing without delay.

SHERWOOD & GODDARD, for Compl't.
JONES & BALLINGER, for def'ts.
McKINNEY & WILLIAMS, Adm'r.

And afterwards, to wit, on the same day and year, the complainant filed a bill of revivor herein, which is in the words and figures following, to wit:—

Bill of Revivor.

To the honorable the Judge of the District Court of the United States, in and for the Eastern District of Texas, sitting in equity.

Harvey Baldwin, who is a resident of the city of Syracuse, and a citizen of the State of New York, respectfully showeth:—

That your orator, the said Harvey Baldwin, on the second day of May, A. D. 1850, exhibited his original bill of complaint in this hon. court against the Galveston City Company, Thomas F. McKin-

ney, Samuel M. Williams, Joseph Osterman, Mrs. Illies, wife of John H. Illies, and her said husband, John H. Illies, Christian Dieckman, and Lemuel Smith, who were all citizens of the State of Texas, and Antoniette Officiers, who was an infant, but whose guardian was a citizen of the State of Texas aforesaid, which said bill of complaint was filed by your orator, the said Harvey Baldwin, to compel from the said Galveston City Company a conveyance to your orator of lots five and eleven, in block six hundred and seventeen; lot twelve, in block four hundred and forty-three; lots thirteen and fourteen, in block three hundred and eighty; lot twelve, in block seven hundred and thirty-three; and lot eleven, in block six hundred and twenty-two, situated in the city of Galveston, and which said lots had theretofore been sold by the sheriff of Galveston County, upon a judgment in favor of McKinney and Williams against one James S. Holman, and under which sale said defendants are alleged in said original bill, to be holding under claim of title adversely to your orator and contrary to equity.

Your orator further shows, that heretofore, to wit, on or about the first day of September, A. D. 1858, said Samuel M. Williams departed this life—that at the time of his death said cause had been set for a hearing and trial after the due appearance of all the defendants therein. That afterwards, in the latter part of the year A. D. 1858, Philip C. Tucker and William H. Williams, who are citizens of the State of Texas, were appointed administrators upon the estate of said Samuel M. Williams, deceased, by the county court of the county of Galveston, and that said Tucker and Williams are now such administrators as aforesaid.

Whereupon the premises considered, your orator prays that said suit may be revived against said administrators, and be in the same plight and condition as the same was at the time of the abatement thereof, by the death of said Samuel M. Williams, or that said defendants as administrators as aforesaid may show good cause to the contrary, and that your orator may have the benefit of said suit, and the same relief against the said defendants as administrators as aforesaid, as is prayed in the original bill, and for such other and further or different relief as may be according to equity.

May it please your honor, to grant unto your orator a writ of subpœna to revive, issuing out of and under the seal of this hon. court, directed to said administrators, Philip C. Tucker and William H. Williams, commanding them and each of them, at a certain day and under a certain penalty therein limited, to be and appear before this hon. court, then and there to show cause, if any they can, why the said suit and proceedings therein should not be revived against them as administrators as aforesaid, and be in the same plight and condition as the same were at the time of the abatement thereof, and further, to stand to and abide such order and decree in the premises as to your honor shall seem meet. And your orator, &c.

SHERWOOD & GODDARD,
Sol'rs for Com. residing at Galveston.

District Court of the United States, Eastern District of Texas. In Equity.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY, THOMAS F. MCKINNEY, SAMUEL M. WILLIAMS, and others, Defendants.

The above cause having been got in readiness for hearing and trial at the time of the death of Samuel M. Williams, one of the defendants therein named, and we, the undersigned, having been appointed administrators upon the estate of said Samuel M. Williams, deceased, upon service on us of the within bill of revivor, we do hereby waive any further service of process or notice, and consent that the cause be revived against us as administrators of the estate of said Samuel M. Williams, deceased, and that an order or decree of revivor be accordingly entered.

PHILIP C. TUCKER, JR.,
WM. H. WILLIAMS,
Adm'rs of the Estate of S. M. Williams, dec'd.

And afterwards, to wit, upon the same day and year, came the complainant and filed his replication herein, which is in the words and figures following, to wit:—

Replication.

United States District Court, Eastern District of Texas.

HARVEY BALDWIN, Compl't,
vs.
THE GALVESTON CITY COMPANY and others, Defendants.

The replication of Harvey Baldwin, complainant, to the several and respective answers of John H. Illies and wife, Thomas F. McKinney, Samuel M. Williams' administrators, and Antoniette Officiers, defendants in the above cause:—

And this repliant, Harvey Baldwin, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the several and respective answers of said defendants, Illies and wife, Thomas F. McKinney, the administrators of said Samuel M. Williams, and the said infant, Antoniette Officiers, saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the respective answers of said defendants are uncertain and untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said several answers contained material and effectual in the law to be replied unto, confessed and avoided, traversed and denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this

hon. court shall direct, and humbly prays as in and by his said bill he has already prayed. SHERWOOD & GODDARD,
Sol'rs and of Counsel for Complainant.

And afterwards, to wit, on the same day and year, a stipulation was filed in this cause, which is as follows, to wit:—

Stipulation.

District Court of the United States, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY and others, Def'ts. } In Equity.

The deposition of Gail Borden, jr., and James L. Holman, in answer to interrogatories and cross-interrogatories in the above cause, having been taken by and before R. L. Stilwell, U. S. commissioner, and returned and filed in this court, it is hereby stipulated that the defects or informalities in the certificates of said commissioner attached to said depositions be, and the same are hereby, waived, reserving all objections to the competency of the proof contained in the depositions.

Galveston, May 6th, 1858.

BALLINGER,
For Galv. City Co., McK. and Williams.
F. H. MERRIMAN,
For Jos. Osterman.
M. M. POTTER, for C. Dieckman.
R. H. HOWARD,
For Illies and wife, and infant Ant. Officiers.
SHERWOOD & GODDARD,
For Complainant.

And afterwards, to wit, on the same day and year, the court here made an order in this cause, which is as follows, to wit:—

Order of Court.

HARVEY BALDWIN
vs.
GALVESTON CITY Co. et al. } No. 57.

On motion of Lorenzo Sherwood, Esquire, it is ordered that the clerk make publication of the depositions on file in this cause, which was accordingly done.

And afterwards, to wit, on the same day and year, the court here made an order in this cause, which is in the words and figures following, to wit:—

Order of Court.

HARVEY BALDWIN vs. GALVESTON CITY CO. } No. 57.

By agreement of counsel of complainants and defendants, it is ordered that the answer of Antoinette Officer, filed on this day, be taken and held as filed on the first day of April, A. D. 1859.

And afterwards, to wit, on the twelfth day of May, of the same year, a subpœna issued from the clerk's office in this cause, in the words and figures following, to wit:—

Subpœna for Witnesses.

The United States of America, Eastern District of Texas.

The President of the United States of America to the marshal of the Eastern District of Texas, or any of his lawful deputies, greeting:—

You are hereby commanded to summon Theodore Brandis, T. Nutch, and Pizarro Edmunds, to be and appear before the Hon. the District Court of the United States, in and for the Eastern District of Texas, now in session in the city of Galveston, to testify on behalf of the defendants in a cause now in hearing in said court, wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants. Herein fail not.

Witness the Honorable John C. Watrous, judge of said court, and the seal thereof, at the city of Galveston, this twelfth day of [L. S.] May, A. D. 1859. JAMES LOVE, Clerk.

And thereupon endorsed is the return of the marshal, in the words and figures following, to wit:—

Marshal's Return.

Received May 12, 1859, returned May 13, 1859. Executed by summoning the within named Theodore Brandis, T. Nutch, and Pizarro Edmunds, by reading this subpœna to them in person.

Marshal's fees, $1 50.

H. E. McCULLOCH, U. S. Marshal,
By D. C. CADY, Deputy.

And afterwards, to wit, on the sixteenth day of May, of the same year, a subpœna for witnesses was issued from the clerk's office of our said court, in the words and figures following, to wit:—

Subpœna for Witnesses.

The United States of America, Eastern District of Texas.

The President of the United States of America to the marshal of the Eastern District of Texas, or any of his lawful deputies, greeting:—

You are hereby commanded to summon Daniel Marston, James P. Collins, and Pizarro Edmunds, if they be found in your district, to be and appear forthwith before the Honorable the District Court of the United States, at a court now in session at the city of Galveston, in and for said district, then and there to testify on behalf of the defendants in a suit in chancery wherein Harvey Baldwin is complainant, and the Galveston City Company and others are defendants. Herein fail not.

Witness the Hon. John C. Watrous, Judge of said court at the city of Galveston, this 16th May, A. D. 1859.

[L. S.] JAMES LOVE, Clerk.

And thereupon endorsed is the return of the marshal, in words and figures as follows:—

Marshal's Return.

Received May 16, 1859: returned May 16, 1859, and executed by summoning and reading this subpœna to the within named Daniel Marston, James R. Collins, and Pizarro Edmunds, in person.

Marshal's fee $1 50. H. E. McCULLOCH,
By D. C. CADY, Dept.

And afterwards, to wit, on the tenth day of June, of the same year, a decree was rendered herein by our said court in this cause, which said decree was in the words and of the tenor following:—

Decree.

At a District Court of the United States, held at the city of Galveston, in and for the Eastern District of Texas, having circuit court powers and jurisdiction (sitting in equity), on the twenty-third day of May, A. D. 1859. Present, Hon. John C. Watrous, District Judge.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY, THOMAS F. McKINNEY, PHILIP C. TUCKER, and WILLIAM H. WILLIAMS, administrators of Samuel M. Williams, deceased; JOSEPH OSTERMAN, JOHN H. ILLIES and MALVINA C. ILLIES, his wife, ANTONIETTE OFFICIERS, CHRISTIAN DIECKMAN, and LEMUEL SMITH, defendants.

This cause came on to be heard at this term, upon the pleadings and proofs, and was argued by counsel for complainants; and all the defendants who have appeared, to wit, the Galveston City Company,

Thomas F. McKinney, the administrators of Samuel M. Williams, Joseph Osterman, John H. Illies and Malvina, his wife, Antoinette Officiers, and Christian Dieckman; and it appearing that said complainant, on the 6th day of October, A. D. 1846, was and ever since has been the equitable owner of said lots, number five and eleven, in block number six hundred and seventeen; lot number twelve, in block four hundred and forty-three; lot number eleven, in block six hundred and twenty-two; lot number twelve, in block seven hundred and thirty-three, in the city of Galveston, mentioned in the bill of complaint; and it also appearing that on the said sixth day of October, A. D. 1846, said complainant was the equitable owner of lots thirteen and fourteen, in block three hundred and eighty, also mentioned in the bill of complaint; and that on the said sixth day of October, A. D. 1846, said complainant was entitled to a fee simple conveyance from said Galveston City Company, having paid the consideration therefor; and it further appearing that the Galveston City Company has made no deed of conveyance for any of said lots to said complainant, or to his heirs or assigns, or for his benefit—

It is therefore ordered and decreed that the title to said lots, and such and every of the same, be and is hereby vested in said complainant, Harvey Baldwin, his heirs and assigns, and further, that said Galveston City Company be, and is hereby ordered and decreed to execute a deed of release to said Baldwin, his heirs and assigns, in fee, of all the right, title, and interest which remained, and was vested in said Galveston City Company, on the fifth day of October, A. D. 1846, either nominally or otherwise; said deed to be executed within ten days after service of a copy of this decree.

And it further appearing that said James S. Holman, neither at the time of the levy of the execution or the judgment in favor of McKinney and Williams, against said Holman, nor at the time of the sale thereon, on the said sixth day of October, A. D. 1846, had any right, title, or interest in either or any of said lots. It is further ordered and decreed that said sheriff's sale was null and void, and inoperative to pass any title, as against complainant's right. And it is further ordered and decreed that said Thomas F. McKinney and those claiming under him, and their heirs and assigns, and the said Christian Dieckman, and his heirs and assigns, be, and they are hereby perpetually enjoined from setting up any right, title, or claim to all or any portion of said lots, by or through, or by virtue of said sheriff's sale, or by virtue of the deeds executed by said sheriff, or by subsequent conveyances through the grantees of such deeds, or their assigns, or by virtue of any possession under such conveyances; and further, that complainant have, and be restored to the possession of said lots, to be delivered up to him by said defendants respectively, or by those claiming through said defendants, within thirty days after service of a copy of this decree.

It further appearing that said lots, five and eleven, in block six hundred and seventeen; number twelve, in block four hundred and

forty-three; number eleven, in block six hundred and twenty-two, and number twelve, in seven hundred and thirty-three, were conveyed by complainant to William R. Baker, in trust for the benefit of complainant, by deed executed and recorded on the fourth day of June, A. D. 1845. It is further ordered and decreed that said Baker execute to said complainant or his assigns, a deed for said lots, in fee, which deed is to be executed at the proper costs and charges of complainant.

It is further ordered and decreed that complainant recover the costs of this court against the defendants Thomas F. McKinney, the administrator of Samuel M. Williams, deceased, Joseph Osterman, John H. Illies and Malvina, his wife, Antoniette Officiers, and Christian Dieckman, to be taxed, etc.

It further appearing that the process of subpœna was not served in this cause on the defendant, Lemuel Smith, in consequence of his continued absence from the State and district, and that he has not appeared in this cause, it is ordered that the decree in this cause is not to prejudice the rights of the said defendant, Smith, in any respect, other than to create a disability to deraign title through the said sheriff's sale, on the execution aforesaid, against Holman, and the deeds from McKinney to Osterman, and from Osterman to said Smith, and in that so far only as said Smith was in privity with said McKinney and Osterman.

Dated 10th June, thirty days' notice from this time.

JOHN C. WATROUS.

And afterwards, to wit, on the same day and year, a statement of the proceedings on the hearing of this cause was filed herein, which is in the words following, to wit:—

Statement of Proceedings.

United States District Court, Eastern District of Texas, at Galveston.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others. } In Equity.

The following is a statement of all the evidence adduced to the court on the hearing of the above cause. The deposition, deeds and writings admitted in evidence and herein referred to, have endorsed thereon or annexed thereto, the ruling of the court upon the same, showing the objections taken, and the part admitted or excluded.

Deposition of Gail Borden, jr., with exhibits annexed thereto.

Deposition of James S. Holman.

Deed from Holman to Baldwin.

Deed from Baldwin to Wm. R. Baker.

Deposition of Pryor Bryan and the exhibits thereto attached.

Admissions contained in the statement of evidence, certified by the clerk and approved by the judge.

Evidence of Lorenzo Sherwood.
Evidence of James P. Cole.
Evidence of L. M. Hitchcock.
Evidence of Pizarro Edmunds.

Defendants' Evidence.

Transcript of judgment and executions, McKinney and Williams *vs.* Holman, from District Court of Harris Co.

Deed from Pryor Bryan, sheriff, to Thomas F. McKinney, with certificates thereon.

Deed from Thos. F. McKinney to Jos. Osterman, with certificates thereon.

Deed from Joseph Osterman to Antonio Officiers, with certificates thereon.

Deed from Thomas F. McKinney to Mrs. Illies, and certificates thereon.

Deed from Pryor Bryan to Joseph Osterman, with certificates thereon.

Certificate Gail Borden as agent of the Galveston City Company, of deed to Holman, with certificates thereon.

The defendants, McKinney and admn'rs of Williams, read as evidence the answer of McKinney to the 13th interrogatory.

The defendant, Christian Dieckman, read as evidence the answers to interrogatories and statements in his answer denying the allegations in the bill of notice at the time of his purchase.

The defendant, Officiers, read in evidence that part of the bill showing that she was the heir of Antonio Officiers.

Defendants, Osterman, Illies, and Officiers, read their answers to interrogatories and denial of statement in bill of notice as purchasers of the trust in Baldwin, or of any right in Baldwin, and parts of bill showing their possession of lots held by them at time of filing of the bill.

Defendants read in evidence the admissions on the trial contained in the statement of evidence certified by the clerk and approved by the judge:—

Evidence of F. Brandis, T. Nutch, Daniel Marston, jr., James P. Collins, George Schneider.

Parties then examined Pizarro Edmunds—see his evidence.

The parts of the answers read by complainants as evidence are endorsed thereon.

I, James Love, clerk of the District Court of the United States for the Eastern District of Texas, at Galveston, certify that the foregoing is a general statement of schedule of all the evidence produced by the parties, complainant and defendants produced on the trial of the cause in chancery, Harvey Baldwin *vs.* the Galveston City Company and others.

JAMES LOVE, Clerk.

Approved.

JOHN C. WATROUS.

And afterwards, to wit, on the seventeenth day of June of the same year, the court here made an order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY and others, Def'ts. } No. 57.

And now, after the final decree entered in this cause, on the 10th day of June instant of the present term of this court, and the above named defendants Joseph Osterman, Thomas F. McKinney, John H. Illies and Malvina Illies, his wife, Christian Dieckman, and Antoniette Officiers by her guardian ad litem, John S. Jones, and show to the court that the matter in dispute in said cause between the complainant and each of said defendants exclusive of costs exceeds the sum of two thousand dollars, and thereupon filed their appeal bond in the sum of five hundred dollars, which was approved by the court, and they claim an appeal from the said final decree to the Supreme Court of the United States next to be holden at Washington on the first Monday in December next, and the same is accordingly allowed. The other defendants in said suit, namely, the Galveston City Company, William R. Baker and the adm'rs of Samuel M. Williams, dec'd, being present in court by their solicitors and declining to join in said appeal.

And afterwards, to wit, on the same day and year came the complainants by counsel and filed their bond herein in the words and figures following, to wit:—

Bond.

The United States of America, Eastern District of Texas.

Know all men by these presents that we, Joseph Osterman, Thomas F. McKinney, John H. Illies and Malvina Illies, his wife, Christian Dieckman and Antoniette by her guardian ad litem, John S. Jones, as principals, and E. H. Sieling and John P. Davie as sureties, are held and firmly bound unto Harvey Baldwin in the just and full sum of five hundred dollars to be paid to the said Baldwin, his certain attorney, executor, administrator, or assign, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this seventeenth day of June, A. D. 1859.

Now the condition of the above obligation is such that whereas lately at our District Court of the United States for the Eastern District of Texas, begun and holden at the city of Galveston on the first Monday of the month of May, A. D. 1859, in a suit between Harvey Baldwin as complainant, and the Galveston City Company and others, as defendants, an appeal was taken by the said above named principals hereto from the decree of the said court herein to

the Supreme Court of the United States, to reverse the aforesaid decree herein. Now, therefore, if the said Joseph Osterman, Thomas F. McKinney, John H. Illies and Malvina Illies, his wife, Christian Dieckman and Antoniette Officiers by her guardian ad litem, John S. Jones, shall fail to prosecute the said suit to effect, and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void, otherwise to remain in full force and virtue.

E. H. SEILING,
JOHN P. DAVIE.

Signed, sealed, and delivered in presence of—
EVE LOVE.

And on the same day and year a statement of the proceedings at the hearing approved by the judge, was filed herein, and is as follows, to wit:—

Statement of Proceedings.

Deposition of Gail Borden, Jr.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY and others, Defendants.
} No. 57. In Equity.

[The following deposition of Gail Borden, jr., with the exhibits annexed thereto, was read in evidence by the complainants at the hearing of this cause. JAMES LOVE, Clerk.]

[*Interrogatories.*]

District Court of the United States, Western District of Texas.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY and others, Defendants.
} In Equity.

Interrogatories to be propounded to Gail Borden, who resides in Litchfield County, in the State of Connecticut, a witness to be examined on the part of complainant in the above cause.

Interrogatory 1st. What is your name and place of residence, and where have you formerly resided since the first day of January, 1839?

Int. 2d. Were you formerly agent of the Galveston City Company, in the State of Texas; and if so, during what time were you such agent; and were you conversant with the business and transactions of said company?

Interrogatory 3d. Were you, in 1839, and have you been since acquainted with Harvey Baldwin, complainant, James S. Holman, and the several persons whose names are mentioned in the certificates and other matters, copies of which purport to be annexed to the certificate of James R. Cole and hereto attached to these interrogatories?

Interrogatory 4th. Please examine the certificates of sale and matters of assignment and memorandum endorsed thereon, or what purports to be copies thereof, attached to the said certificate of James P. Cole; and state whether you are and were acquainted with said property, the circumstances of its sale by the Galveston City Company, and also whether the certificates of sale were all assigned to you; and if so, by whom, or whose procurement, and where standing in your name, were they so put in your name in trust, and if so, for whom, and how otherwise? State particularly, and state also whether you were a mere naked trustee without interest, and who was the actual owner of said certificates, and beneficially interested therein, and state also whether or not complainant was alone beneficially interested in said certificates.

Interrogatory 5th. After the assignment of these certificates of sale had been made to you, did you make or create an assignment to James S. Holman? If so, will you please state whether Harvey Baldwin was present at the time, and state also whether said assignment to Holman was made at your suggestion, and what was the reason and object of putting said certificates in the name of Holman, and state also whether it was done without consideration paid by Holman, and whether or not it was a mere naked trust for the benefit of Baldwin, complainant, or how otherwise? Please state fully the object, purposes, and nature of the transaction in the assignment of said certificates to Holman, and will you further state whether at the time of your assignment of these certificates to Holman it was specially understood between yourself, complainant, and Holman, that said assignment was made to Holman in trust for the benefit of said complainant, and for no other purpose whatsoever, and if different, how otherwise?

Interrogatory 6th. Please look at the envelope marked No. 113, and attached to the certificate of James P. Cole, and which is annexed to these interrogatories. Will you please state whether the writing on the face or outside of said envelope is your handwriting, including the words "No. 113," the name of James S. Holman, the numbers of the lots and blocks, and also the words "In Trust." Will you now state whether you enclosed said original certificates in said envelope and made said memorandum on the outside? If so, at what time did you do it? And please state what is the meaning of the words and figures "No. 113," and whether they refer to the number of the deed executed, or intended to be executed, by the Galveston City Company for the said lots mentioned in said memorandum, and if not, to what else do they refer. State also the meaning of the words "In Trust," and to what trust they referred, if any. And who was the trustee, and who the beneficiary, and what was the object and purpose in writing said words "In Trust" on said envelope? And state also whether you enclosed said certificates in said envelope, and whether you put them on the files of papers in

the office of the Galveston City Company, and how long did they remain on file to your knowledge.

Interrogatory 7th. If you state that the words and figures "No. 113" referred to the deed executed or intended to be executed for the lots by the Galveston City Company, please state whether or not you now recollect that the same was executed, and if so executed, whether you now recollect of seeing the deed in an executed form; and also state who was the proper officer of the company to sign and acknowledge deeds at the time. It is the distinct recollection and memory of your mind now inquired after.

Interrogatory 8th. If you state that a deed for these lots was executed by the proper officer of the Galveston City Company, will you now state whether it was intended to be executed in trust to any one, and if so, for whose benefit? And do you now recollect the contents of said deed, so as to be able to state from memory whether said deed was absolute on its face, or had a trust grafted upon it, or whether it contained words signifying that the deed was in trust? If you can recollect the contents of the deed, state all the names of the parties to it, and if you cannot now recollect the contents of the deed so as to state from your memory, please so state.

Interrogatory 9th. Who was the proper person or officer of the Galveston City Company to deliver deeds after being executed? Can you state from your present memory whether you recollect that a deed from the Galveston City Company for the lots was at any time delivered to James S. Holman, either in trust or otherwise? If you have any such recollection, state when, where, and at what time and place such delivery of a deed was made.

Interrogatory 10th. Can you state from your present recollection, that any deed from the Galveston City Company for these lots was delivered to the complainant, Baldwin? If you so remember, please state when and where such delivery was made.

Interrogatory 11th. It appears that on the 1st of October, A. D. 1846, you signed a writing of which the following is substantially a copy, viz:—

"Office Galveston City Company, Galveston, 1st October, 1846.

I hereby certify that deeds were executed by the Galveston City Company to James S. Holman, bearing date fifth June, one thousand eight hundred and forty, for the following lots in the city of Galveston, to wit: In deed No. 113, lots Nos. five and eleven (5 and 11), in block number six hundred and seventeen (617), lot number twelve (12), in block four hundred and forty-three (443), lot number eleven (11), in block No. six hundred and twenty-two (622), lots Nos. thirteen and fourteen (13 and 14), in block No. three hundred and eighty (380), and lot number twelve (12), in block number seven hundred and thirty-three (733); and in deed No. 114, lot number thirteen (13), in block number six hundred and eighty-one (681), lot number thirteen (13), in block number six hundred and seventy-one (671),

and lot number thirteen (13), in block number four hundred and ninety-six (496). And I further certify that said company has no claim whatever to said lots, the amount of the purchase money for the same having been fully paid to the said company.

In witness whereof I hereunto set my hand and scrawl for seal, the day and date first above written.

GAIL BORDEN, JR., [L. S.]
Agent for Galveston City Company.

Attest,
J. A. SWETT,
P. EDMONS.

Did you sign the certificate of which the foregoing purports to be a copy in the manner the same purports to have been signed? If so, at what date? At whose request or solicitation? What was stated to be the object of said certificate, if such object was stated, and by whom was said statement made, if any?

Interrogatory 12th. At the time of the date of said certificate, or thereabouts, did the original certificates of sale enclosed in the said envelope remain on file in the office of the Galveston City Company, and did you refer to said papers and exhibit them to the persons applying for said certificate, and did you disclose to such person or persons your knowledge of the existence of the trust in favor of complainant Baldwin, or did you withhold such knowledge? State particularly and detail the whole of the conversation you may have had with such person or persons on this subject, and state whether said Swett and Edmonds were informed or knew, one or both of them, that the property noted in said envelope was held in trust for complainant. And state also whether you knew of the intention to sell said property on a judgment against Holman, and whether, had you known that such was the intention, you would have given said certificate in such form.

Interrogatory 13th. In the certificate signed by you, and attested by Swett and Edmonds, you refer to two deeds of the same date executed by the Galveston City Company to Holman, and designate the deeds as numbered 113 and 114. If such deeds were executed, why was it that all the property conveyed, or intended to be conveyed at the same date and to the same party, was not embraced in the same deed?

Interrogatory 14th. Do you know or can you state any other matter or thing that may be of benefit or advantage to either complainant or defendants, or either of said defendants? If so, state it fully and particularly, the same as if you were specially interrogated thereto.

SHERWOOD & GODDARD,
Solicitors for Compl't.

We hereby stipulate that the testimony of the witness, Gail Borden, jr., may be taken upon the foregoing interrogatories, and the cross-interrogatories hereto annexed, by any proper officer, and re-

turned certified to the court, reserving all questions as to competency of proof, and further, that no commission need issue. Dated September 11th, 1857.

SHERWOOD & GODDARD,
Sol'rs for Complainant.

JONES & BALLINGER,
Sol'rs for Galv. City Co., and McKinney and Williams.

F. H. MERRIMAN,
Solicitor for J. Osterman.

H. N. & M. M. POTTER,
Sol'rs for C. Dieckman.

R. H. HOWARD,
Sol'r for Illies and Wife.

R. H. HOWARD,
Sol'r for infant Antoniette Officiers.

(*Cross-interrogatories.*)

In the District Court of the United States, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY and others, Defendants. } In Equity.

Cross-interrogatories to be propounded on the part of the defendants in said cause to Gail Borden, jr., a witness on the part of the complainant in said cause.

1st cross-int. Was not Henry Baldwin, the above named complainant, present when such of the certificates of purchase of lots, copies of which certificates are attached to the direct interrogatories propounded to you herein by said complainant, were assigned to you, and when you assigned the same to James S. Holman, and was not said Harvey Baldwin knowing to the fact of said transfers being made, and did he make any objection to the same?

2d cross-int. During all of the year 1840, of what nation or government was Harvey Baldwin a citizen; of what country was he a native; was he ever a citizen of the Republic of Texas? If you say that said Baldwin was ever a citizen of the Republic of Texas, then state when and how he became a citizen of said Republic.

3d cross-int. Were you not agent of the Galveston City Company during all of the year 1840? Were not the assignments or transfers on the certificates mentioned in the first cross-interrogatory considered sufficient by said Galveston City Company, its officers and agents, under the usages and customs of said company, to pass and vest the lawful property and right in said certificates in the assignee of the same, and to authorize such assignee to demand and receive from said company a deed or deeds for the lots mentioned in said

certificates, vesting the full and absolute property in said lots in such assignee?

4th cross-int. Did you not, while agent of the Galveston City Company, and as its agent, make a deed or deeds for the lots mentioned in the certificates referred to in the first cross-interrogatory to James S. Holman? and if yea, when and where did you make such deed, and what was done with it, was not the same delivered to said James S. Holman immediately or soon after execution? If you say you did not make such deed or deeds, then state whether said company did not, by deed or deeds, convey said lots to said Holman; and if yea, then state when and what became of such deed or deeds; was not the said deed or deeds to said Holman in the usual form of deeds for lots sold by said company, and for which said company executed deeds, and did such deed or deeds contain any other than the usual stipulations and provisions put in for usual conveyances made by or under the authority of said company; was there any provision in said deed or deeds conveying said lots to said Holman, as trustee for Harvey Baldwin, or any other person?

5th cross-int. Had you any knowledge or reason to believe that the said Baldwin was in debt at the time said certificates were transferred to said Holman, and whether there was any object, design, or intent to cover any property, and protect it from creditors? If so, answer and state all such facts fully and specially.

6th and last. Are there any other facts or any statement made by said Baldwin or Holman which you believe would benefit defendants? If so, state the same fully.

JONES & BALLINGER,
Sol'rs for Galv. City Co., and McK. & W.
H. N. & M. M. POTTER,
Sol'rs for Ch. Dieckman.
F. H. MERRIMAN,
Solicitor for Jos. Osterman.
R. H. HOWARD,
Solicitor for Illies and Wife.

(Exhibits.)

No. 113.

James S. Holman.

Lots	No. 5 and 11	in block	617
"	12	"	443
"	11	"	622
"	13 and 14	"	380
"	12	"	783

In Trust.

Certificate of Purchase in Galveston City.

I, Levi Jones, agent for the Galveston City Company, do hereby

certify that Harvey Baldwin having become the purchaser of three lots in said city, viz., lots number five and eleven (5 and 11), in block number six hundred and seventeen (617), and lot number twelve (12), in block number four hundred and forty-three (443), for the sum of twenty-five hundred dollars and cents, and having on his part complied with the terms of sale as prescribed by the Board of Directors, entitled to receive a conveyance for said lots under the orders of the Board (with a lien upon the said lot for the payment of A. C. Allen's notes), so soon as the Company are prepared to execute deeds in proper form.

Witness my hand, this 1st day of January, A. D. 1839.

LEVI JONES, [L. S.]
Agent for Galveston City Co.

Signed in presence of
WM. H. MAURY.

On the back of said certificate, as follows:—

This is to certify that the lien as expressed in the twelfth line of the within certificate, is this day taken off and charged to the account of A. C. & J. K. Allen, agreeably to the order releasing the lien on one-half of the lots purchased, for which stock is pledged.

Galveston, 5th May, 1840. GAIL BORDEN, JR.,
Agent for Galveston City Company.

Endorsed: H. Baldwin. Certificate. Galveston City Lots.

For value received, I hereby transfer all my right, title, and interest in the within certificate to Gail Borden, and request title to issue to him without lien. Dated June 4th, 1840.

HARVEY BALDWIN. [SEAL.]

Witness—E. J. REDOUT,
JAMES S. HOLMAN.

For value received, I hereby transfer all my right, title, and interest to the within mentioned lots, to James S. Holman, his heirs and assigns, and authorize the Galveston City Company to make any title to him or them.

Witness my hand, this 3d day of June, 1840.

G. BORDEN, JR.

H. BALDWIN,
E. J. REDOUT.

No. 364. Certificate of purchase in Galveston City.

I, Gail Borden, Jr., agent for the Galveston City Company, do hereby certify that Mosely Baker, having become the purchaser of one lot in said city, viz., number eleven (11), in block six hundred and twenty-two, for the sum of ten hundred and twenty-five (1025 00) dollars and cents, and having on his part complied with the terms of sale, as prescribed by the Board of Directors, is entitled to receive a conveyance for said lot under the orders of the Board (with a lien

upon the said lot for the payment of his notes), so soon as the company are prepared to execute deeds in proper form.

Witness my hand, this 5th day of May, A. D. 1840.

G. BORDEN, JR.,
Agent for Galveston City Company.

Signed in presence of

The following appears on the back of the certificate:—

For value received, I hereby transfer all my right, title and interest to the within certificate and the premises therein mentioned to James S. Holman, and request title to issue to him, or to his order, without lien.

Dated May 20, 1840. Deed No. 113.

MOSELY BAKER. [L. S.]

In presence of
A. C. ALLEN,
WM. H. JACK.

For value received, I hereby transfer all my right and title to the within certificate and the lot therein mentioned to Gail Borden, and request a deed to issue to him without lien.

Dated June 4, 1840. JAMES S. HOLMAN.

Witness—E. J. REDOUT,
M. B. MENARD.

For value received, I hereby transfer all my right, title and interest in and to the within mentioned lot to James S. Holman, his heirs and assigns, and I authorize the Galveston City Company to make title to him or them.

Witness my hand, this 3d June, 1840.

G. BORDEN, JR.

Witness—E. J. REDOUT.

No. 365. Certificate of purchase in Galveston city.

I, Gail Borden, jr., agent of the Galveston City Company, do hereby certify, that A. C. and J. K. Allen having become the purchaser of two lots in said city, viz., number thirteen and fourteen (13 and 14), in block three hundred and eighty (380), for the sum of twelve hundred and thirty-five (1235) dollars and cents, and having on their part complied with the terms of sale, as prescribed by the Board of Directors, are entitled to receive a conveyance for said lots under the orders of the board (with a lien upon the said lots for the payment of their notes), so soon as the company are prepared to execute deeds in proper form.

Witness my hand, this 5th day of May, A. D. 1840.

Signed in presence of G. BORDEN, JR.,
Agent for the Galveston City Company.

(On the back of said certificate as follows:—)

For value received, I hereby sell and transfer all my right, title,

and interest in the within certificate, and lots therein mentioned, and request a deed of conveyance to issue to him without lien. Dated June 4th, 1840.

M. B. MENARD,
Assignee of A. C. Allen.

Witness, E. J. REDOUT,
JAMES S. HOLMAN.

For value received, I hereby transfer all my right, title, and interest to the within lots to James S. Holman, his heirs and assigns, and authorize the Galveston City Company to make title to him or them. June 3d, 1840.

G. BORDEN, JR.

Witness, E. J. REDOUT,
H. BALDWIN.

No. 366. Certificate of purchase in Galveston city.

I, Gail Borden, jr., agent for the Galveston City Company, do hereby certify, that A. C. and J. K. Allen, having become the purchaser of one lot in said city, viz., lot number twelve (12), in block seven hundred and thirty-three (733), for the sum of twenty-three hundred dollars (2300) and cents, and having on their part complied with the terms of sale, as prescribed by the Board of Directors, are entitled to receive a conveyance for said lot, under the orders of the Board (with a lien upon the said lot for the payment of their notes), so soon as the company are prepared to execute deeds in proper form.

Witness my hand, this 5th day of June, A. D. 1840.

Signed in presence of

G. BORDEN, JR.,
Agent for Galveston City Company.

(On the back of said certificate as follows :—)

For value received, I hereby sell and transfer to Gail Borden all my right and title to the within certificate, and the lots therein mentioned, and request a deed to issue to him for the same without lien. Dated June 4th, 1840.

JAMES S. HOLMAN, for A. C. Allen,
Surviving partner of A. C. & J. K. Allen.

Witness, E. J. REDOUT,
H. BALDWIN.

For value received, I hereby transfer all my right, title, and interest in and to the within lot, to James S. Holman, his heirs and assigns, and authorize the Galveston City Co. to make title to him or them.

Witness my hand, this 3d June, 1840.

G. BORDEN, JR.

Witness, E. J. REDOUT,
H. BALDWIN.

Office of the Galveston City Company.

I, James P. Cole, agent for the Galveston City Company, do hereby certify that the foregoing are true copies of the original certificates of purchase of the lots therein mentioned, and of the assignments and memorandums endorsed thereon, and which are now on file in the office of said company at Galveston, and I further certify that the said certificates were enclosed in the envelope or cover hereto annexed, numbered 113, with the name of James S. Holman, and the numbers of the lots and blocks, and the words "in trust" written upon it, and that it embraces the same property which I am informed is now in litigation in the District Court of the United States for the District of Texas, in the suit of Harvey Baldwin, complainant, *vs.* The Galveston City Company and others, defendants, excepting lots 13 and 14, in block 380, are not embraced in said suit.

Given under my hand, this 11th day of September, A. D. 1857.

[L. S.] J. P. COLE, Agent G. C. C.

(*Deposition Certificates.*)

On this 7th day of November, 1857, personally appeared before me, Gail Borden, jr., who being by me duly sworn, did depose and say in answer to the direct and cross-interrogatories and stipulation hereunto annexed, as per the following testimony:—

R. E. STILWELL, U. S. Com.

United States of America, Southern District of New York, ss.

I, Kenneth G. White, Clerk of the Circuit Court of the United States of America for the Southern District of New York, Second Circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed deposition and certificate, and his signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same, a United States Commissioner, duly appointed by the Circuit Court of the United States of America for the Southern District of New York, Second Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court, this ninth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of these United States the eighty-second.

[L. S.] KENNETH G. WHITE, Clerk.

(*Deposition.*)

District Court of the United States, Western District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY and others, Defendants.

Deposition of Gail Borden, jr.. taken by me, R. E. Stilwell, U. S. Commissioner for the Southern District of New York, in answer to the interrogatories and cross-interrogatories, and in pursuance of the stipulations hereunto annexed, the 7th day of November, 1857. Said Gail Borden, jr., being by me duly sworn, did depose and say in answer to said direct and cross-interrogatories, as follows, namely:—

To the first interrogatory he saith. My name is Gail Borden, jr. I am 66 years of age. I reside in Litchfield Co., in the State of Connecticut, and part of the time in the city of New York. I resided from 1839 to 1851 in the city of Galveston, in Texas ; and since 1851 most of the time in Brooklyn and in the city of New York, and a year and a half of that time in Texas.

To the second interrogatory he saith. I was formerly agent of the Galveston City Company in Texas, from June, 1839, until May, 1854, and was conversant with the business and transactions of the company. When absent in 1851, '52, '53, my brother acted in my place.

To the third interrogatory he saith. I was acquainted with the complainant, Harvey Baldwin, and with James S. Holman, and with the several persons whose names are mentioned in the certificates, copies of which purport to be annexed to the certificate of James R. Cole, which are attached to the interrogatories propounded to me, and to which I am now answering.

To the fourth interrogatory he saith. I have examined the certificates of sale and matters of assignment and memorandums endorsed thereon, or what purported to be copies thereof attached to the said certificate of James R. Cole. I am acquainted with said property mentioned in said certificates, and am acquainted with the circumstances of its sale by the Galveston City Company, and these certificates of sale, or the originals of which these purport to be copies, were all assigned to me. They were all assigned to me by the persons by whom they purport to have been assigned, as appears by the copies attached to these interrogatories. I do not know by whose procurement, except that they were brought to me by Harvey Baldwin, the complainant, who at the time stated the object of having them assigned to me. When standing in my name they were put and so standing in my name merely in trust for Harvey Baldwin, the complainant. I have no interest in the lots whatever. Understanding at the time that the complainant was the actual owner, and I was myself a mere naked trustee for his benefit, and the complain-

ant was the actual owner of said certificates, and alone beneficially interested in them.

To the fifth interrogatory he saith: After the assignment of these certificates of sale had been made to me, I made or executed an assignment to James S. Holman; although my assignment to Holman appears to bear date the third of June, it was in fact made subsequent to the assignment to me. Which assignment is erroneously dated I cannot state. Harvey Baldwin, the complainant, and James S. Holman were both present at the time of my making the assignment to Holman. The said assignment to Holman was made at my suggestion. The reasons I had for making the suggestion for putting said certificates in the name of Holman were, that I, being agent of the Galveston City Company, and as such agent required to make out deeds, as well as to sign them, I thought it would be inconsistent as such agent, and therefore declined the trusteeship. The assignments of the certificates by me to Holman were without any consideration whatever paid by Holman, and such assignments were, as I understood, a mere naked trust for the benefit of Baldwin. It was distinctly understood between myself, Holman and Baldwin, that these assignments were in trust for the benefit of Baldwin, and for no other purpose whatsoever.

To the sixth interrogatory he saith: I have looked at the envelope marked No. 113 and attached to the certificate of James P. Cole, annexed to these interrogatories. The writing on the face or outside of said envelope is my handwriting, including the words No. 113, the name of James S. Holman, the numbers of the lots and blocks, and also the words "In Trust." I did inclose said original certificates in said envelope, and made said memorandum on the outside. I did it within a day or two after the transaction of the assignments before referred to in my testimony. The number on said envelope marked "113" was intended to denote the number of the deed to be executed by the Galveston City Company for said lots. The words "In Trust" endorsed on the envelope were made to denote that the lots to be deeded numbered on the envelope were held in trust. They referred to the trust held by Holman for the benefit of Baldwin, before stated in my testimony. The object and purpose of my writing the words "In Trust" on said envelope were to furnish my own memory with a memorandum of the facts and also to distinguish these lots from other lots which Holman owned in his own right, and for which he was to receive another deed at the same time, which other deed to Holman was to be numbered 112 or 114. Another object in writing the words "In Trust" upon the envelope was that those who might succeed me in office might understand that these lots were held in trust. I inclosed these certificates in said envelope and placed them on file in the office of the said Galveston City Company, and I believe they always remained on file in the office of said company as long as I was the agent thereof.

To the seventh interrogatory he saith: It is not now in my dis-

tinct recollection that either of the deeds, the one for Holman's individual benefit or the one to Holman in trust for Baldwin, were made out and executed by the company; but I believe they were, for it was my practice to make out deeds for all lots where certificates were filed. At that time the directors of the Galveston City Company, together with the agent, were the proper officers to execute deeds for the company. I have no distinct recollection of seeing either of the deeds to Holman in an executed form.

To the eighth interrogatory he saith: If the deed in trust was made out and executed (as I presume it was), I do not recollect and cannot now state the terms or language of the deed in reference to the trust, or whether any trust clause was or was not made in the deed. But I do not recollect that I made a memorandum of the trust in pencil on the first record made for deeds to be executed in the office of the company.

To the ninth int. he saith. I was the proper person to deliver deeds for the Galveston City Company after they were executed, at the time referred to, but I do not recollect that either of the deeds spoken of to Holman were delivered to him.

To the 10th int. he saith. I have no recollection of ever having delivered any deeds to the complainant.

To the eleventh int. he saith. I presume I did sign the certificate referred to in the 11th interrogatory, and at the date it bears. I do not recollect at whose request or solicitation. I do not recollect what was stated to be the object of obtaining it. The agent was frequently called on to state what property stood in the name of individuals, and to state whether it was free from any claim of the company.

To the 12th int. he saith. At the time of the date of said certificate mentioned in the 11th interrogatory, the original certificates of sale were enclosed in the envelope heretofore mentioned, and attached to these interrogatories, were on file in the office of the Galveston City Company. I do not recollect of refusing the person who applied for said certificate to said paper, but I do well remember when questioned in relation to the lots named on said envelope and heard of lots before referred to by me, in the office of the company, I did uniformly inform such inquirers of the true ownership of such lots, and that they were held in trust by said Holman for the benefit of said complainant Baldwin, and I did never withhold said knowledge from any person. I do not recollect what passed in conversation at the time of giving said certificate, but I have no doubt that I gave notice to the parties applying for the certificate of the ownership of said Baldwin of the lots mentioned on the envelope, and the record of the deed 113, before referred to. At the time of giving said certificate I do not recollect of being informed that there was any intention of selling these lots on a judgment against Holman. And I do not now recollect that I then knew of any such intention; and had I then knew of such intention I could not have given such certificate, with-

out noting upon it that the lots mentioned in memorandum for deed No. 113 were held by Holman in trust for Baldwin.

To the 13th int. he saith. If such deeds were executed as referred to in said certificate attested by Swett and Edmonds, and designated as numbers 113 and 114, they were given separately, for the reason that the lots in the memorandum 113 belonged to the complainant, and were held by said Holman in trust for him, and the lots in memorandum No. 114 were Holman's individual property, as I understood.

To the 14th int. he saith. I do not now recollect at what time I knew the fact of a judgment having been obtained by McKinney and Williams against Holman, but I am very sure that in all inquiries made of me in relation to property standing in Holman's name on the files or records of the Galveston City Company, I was particularly explicit to state that the lots mentioned in the memoranda marked No. 113, before referred to in my testimony, were held by Holman in trust for Baldwin, the complainant. And I believe that Thomas F. McKinney, one of the defendants in this suit, after the judgment was obtained by McKinney and Williams against Holman, inquired of me what lots stood in the name of Holman on the files and records of said Galveston City Company, and I stated in the certificate above referred to, but at the same time informed him that the lots mentioned in the aforesaid memorandum No. 113, were held by Holman in trust for Baldwin. This information to McKinney was before any sale on the judgment in favor of McKinney and Williams against Holman.

To the first cross-interrogatory he saith: Harvey Baldwin was present when each of the certificates referred to in this cross-interrogatory were assigned by me to Holman, and was knowing to the fact of such transfer being made, and did not object to the same.

To the second cross-int. he saith: During the year 1840 the complainant was a citizen of the United States, and a native and resident of the State of New York, as I understood, and was never a citizen of the Republic of Texas to my knowledge.

To the third cross-int. he saith: I was agent of the Galveston City Company during the whole of the year 1840, and the assignments or transfers on the certificate were considered sufficient by the company and agent, according to its usages to vest the right in the assignee of said certificates, and to receive a deed of conveyance for the lots mentioned in the certificates and to demand a deed therefor.

To the 4th cross-int. he saith: For answer to this cross-interrogatory I refer to my answer already given to the 7th direct interrogatory, and for further answer to this interrogatory I further state that I cannot state further than I have already stated, whether said company executed deeds to Holman, or if they did what became of them, nor what were the terms or particular forms of them respectively, nor whether such deed or deeds contained any other than the usual

stipulations and provisions put in fee simple conveyances made by or under the authority of said company.

To the 5th cross-int. he saith: In answer to this cross-int. I cannot state anything further than I have already stated in answer to former direct and cross-interrogatories. I had no knowledge or reason to believe that the said Baldwin was in debt at the time said certificates were transferred to said Holman, but on the contrary understood him to be a man of large means, and investing money in real estate in Texas, as well as in Texas funds, and I did not know or believe that there was any design or interest to cover said property to protect it from creditors.

To the 6th cross-int. he saith: There are no other facts or any statements of Baldwin or Holman to my knowledge that would benefit the def'ts. GAIL BORDEN, Jr.

Sworn to before me, this 7th November, 1857.

R. E. STILLWELL, U. S. Com.

Deposition of James S. Holman.

[HARVEY BALDWIN
vs.
THE GALVESTON CITY COMPANY. } In Equity, 57.

The within deposition of James S. Holman was read in evidence on the hearing of this cause by the complainant. The defendants when the same was offered as evidence objected to the admissibility of the same, on the ground that the said Holman was an interested witness, and would be liable over to the complainant, but the court overruled said objection.

After the reading in evidence of the deed from Holman to Baldwin, the defendants thereupon moved the court to exclude said deposition, because the said witness was interested in the result of the suit and liable over on his warranty to complainant, but the court overruled said motion.

The answer to the 5th or last direct interrogatory in chief was ruled out by the court on the objection of the defendant, because there was no allegation in the pleadings under which the same was admissible as evidence, and because no payment of said judgment was shown thereby. JAMES LOVE, Clerk.]

(*Interrogatories.*)

United States District Court, Western District of Texas, ss.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY Co. and others, Defendants.

Interrogatories to be propounded to James S. Holman, who resides in the State of a witness on the part of complainant.

Interrogatory 1st. What is your age, and place of residence, and have you formerly resided in the State of Texas, and were you ac-

quainted with Gail Borden, jr., formerly agent of the Galveston City Company, and with the complainant in this suit, Harvey Baldwin, and with Thomas F. McKinney, and Samuel M. Williams, and other defendants?

Interrogatory 2d. In the year 1840, about the 3d or 4th of June, were the original certificates of sale or purchase issued by the Galveston City Company for lots 5 and 11 in block 607, lot 12 in block 443, lot 11 in block 622, lots 13 and 14 in block 380, and lot 12 in block 733, in the city of Galveston, assigned by you to Gail Borden, jr.? If so, state where said assignment was made, and who was present. State also at whose suggestion said assignment was made, and for what object and purpose it was made, and whether made in trust, and if so, for whose benefit; and whether or not you were made a mere naked trustee without interest, or how otherwise; and whether you paid any consideration on account of said assignment. State particularly all the facts relative to the subject matter inquired about.

Interrogatory 3d. Did you subsequently execute a deed including this same property to complainant? If so, state when and where.

Interrogatory 4th. Can you state whether the Galveston City Company ever delivered to you a deed of this property? If so, state when and where, and also state whether you can produce the deed, and if you cannot, what has become of it.

Interrogatory 5th. If you know or can state any other matter or thing that may be of benefit or advantage to complainant or defendants, or to either of them, please state it the same as though you were specially interrogated thereto.

SHERWOOD & GODDARD,
Solicitors for Complainant.

(*Stipulation.*)

We hereby stipulate that the answers to the foregoing interrogatories, and the following cross-interrogatories, may be taken without commission, and certified and returned by any proper officer without further notice, reserving all questions as to competency of proof.

SHERWOOD & GODDARD,
Sol'rs for Compl'ts.

JONES & BALLINGER,
Sol'rs for Galveston Co. and McKinney & Williams.

F. H. MERRIMAN,
Solicitors for J. Osterman.

H. N. & M. M. POTTER,
Solicitors for C. Dieckman.

R. H. HOWARD,
Solicitor for Illies and wife.

R. H. HOWARD,
Solicitor for infant Antoniette Officiers.

(*Cross-interrogatories.*)

United States District Court, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY et al., Def'ts.

Cross-interrogatories to be propounded by defendants to James S. Holman.

1st cross-int. If you answer the 2d direct int., then state whether all the trusts, if any executed, were not embraced in the assignments spoken of in the said direct interrogatory.

2d cross-int. If you answer the 3d direct interrogatory in the affirmative, then state where said deed is now.

F. H. MERRIMAN,
Sol'r for Jos. Osterman.

3d cross-int. Have you any knowledge or reason to believe that the said Baldwin was in debt at the time of said transfers to you, and that it was in part or in whole the object, intent, or design, of said transfer to protect the property from such indebtedness? Was not the object also in the whole or in part to cover said property from forfeiture because said Baldwin was an alien?

H. N. & M. M. POTTER,
Sol'rs for Christian Dieckman.

JONES & BALLINGER,
Sol'rs.

F. H. MERRIMAN,
Sol'r for Jos. Osterman.

R. H. HOWARD,
Solicitor for Illies and wife.

(*Deposition.*)

On this 9th day of November, 1857, personally appeared before me James S. Holman, who being by me first duly sworn did depose and testify in answer to the direct and cross-interrogatories and stipulation hereto annexed in the following testimony.

R. E. STILWELL, U. S. Com.

United States of America, Southern District of New York, ss.

I, Kameth G. White, clerk of the Circuit Court of the United States for the Southern District of New York, Second Circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed deposition, and that the signature to the same is his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States Commissioner, duly appointed by the Circuit Court of the Southern District of New York, Second Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 9th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of these United States the eighty-second.

[L. S.] KAMETH G. WHITE, Clerk.

Deposition of James S. Holman taken by me, R. E. Stilwell, U. S. Commissioner for the Southern District of New York, in answer to the interrogatories and cross-interrogatories, and in pursuance of the stipulation hereunto annexed, the 9th day of November, 1857; said Holman being by me first duly sworn did depose and say in answer to said direct and cross-interrogatories as follows, namely:—

To the first interrogatory he saith: My name is James S. Holman. I reside within 4 miles of Austin, in Texas. I became a citizen of Texas in 1835, and have been a citizen of Texas ever since. I am acquainted with Gail Borden, jr., formerly agent of the Galveston City Company, and with the complainant, Harvey Baldwin, and with Thomas F. McKinney, Samuel M. Williams, Joseph Osterman, Wm. R. Baker, and do not know the other def'ts.

To the second interrogatory he saith: On or about the 3d or 4th day of June, 1840, Gail Borden, jr., assigned to me in trust for Harvey Baldwin several lots of land in the city of Galveston, and as I verily believe, lot number 5 and 11 in block 617, lot number 12 in block 443, lot number 11 in block 622, lots Nos. 13 and 14 in block 380, lot number 12 in block 733. There were present at the time Harvey Baldwin, the complainant, Gail Borden, jr., and myself. The assignment was made at the suggestion of Gail Borden, jr. The object was to be held in trust for Harvey Baldwin, the complainant, and I was made a mere naked trustee, and had no interest in the same whatever, and paid no consideration on account of said assignment.

To the third int. he saith: I did on or about the 6th day of January, 1845, in the city of Baltimore, in Maryland, execute such deed.

To the fourth int. he saith: I have no recollection, knowledge, or belief of the Galveston City Company ever executing or delivering to me a deed of conveyance of these lots above named.

To the 5th int. he saith: The judgment of McKinney and Williams against me, and upon which the foregoing lots were sold, as I have understood, provision had been made by me for the payment, and one of the plaintiffs, Thomas F. McKinney, was notified thereof by me. The provision for said payment was as follows: A mortgage upon a house and lot of Dr. Evans, and against him in the city of Houston was owned and placed by me in the hands of keepers, Love and Riley, attorneys in the city of Houston, for collection for the sum of about $3000, the receipt for which was taken by me in the name of McKinney and Williams, and afterwards the receipt was sent to them by me, to McKinney and Williams, by the lands

of Judge John C. Watrous. This mortgage and interest I understood was collected, and would amount, as appeared by a computation made by McKinney and myself, to sufficient to pay the demand aforesaid of McKinney and Williams against me, or thereabouts, and was entirely satisfactory to the said McKinney, as he at the time expressed himself to me. The above computation and arrangement for the settlement of said demand of said McKinney and Williams against me was made according to my best recollection or belief in June or July, 1840. Said McKinney and Williams at the time last aforesaid had no other demand against me than the one above stated, and upon the judgment on which said lots were sold.

(The foregoing answer to the fifth interrogatory ruled out by the court, on the objection of the defendants, and not read as evidence at the hearing.)

To the first cross-int. he saith. I cannot answer this cross-interrogatory further than I have answered already in my 2d direct interrogatory.

To the second cross-int. he saith. I cannot state where the deed is inquired about in this 2d cross-interrogatory.

To the third cross-int. he saith. I have no knowledge or reason to believe that the said Baldwin was in debt at the time of said transfer to me, or that it was in part or in whole the object, interest, or design of said transfer to protect the property from such indebtedness, but on the contrary know that said Baldwin did, at the time of said assignment by said Borden to me, place in my hands the sum of ten thousand dollars to be invested on his account in the government stock of the republic of Texas. The object, as expressed, was to place the lots in the hands of a citizen to watch over and protect the same, for the payment of taxes, and otherwise.

JAMES S. HOLMAN.

Sworn to before me, this 9th November, 1857.

R. E. STILLWELL, U. S. Com.

Deed from Holman to Baldwin.

U. S. District Court, Galveston.

HARVEY BALDWIN vs. GALV. CITY CO. and others. } No. 57. In Equity.

The following transcript of deed and certificates and stipulation from James S. Holman to Harvey Baldwin was offered in evidence at the hearing of this cause by complainant. The defendants objected to its admissibility on the following grounds:—

1st. That it was signed by only one witness, and therefore void as to creditors.

2d. That it was not acknowledged or proved in any manner to admit the same to record under the laws of Texas, or to operate as notice thereof to creditors as subsequent purchasers.

3d. That no consideration was proved for said deed to enable the same to operate as against creditors of said Holman, or purchasers.

The court sustained the objection of defendants as to the record of said deed, deciding that it was not properly admitted to record, and had no effect as a recorded deed, but was otherwise admissible as evidence to show the rights of the parties and title to the property in controversy, and said deed was read in evidence.

JAMES LOVE, Clerk.]

This indenture, made on the sixth day of January, in the year of our Lord one thousand eight hundred and forty-five, between James S. Holman, of the city of Houston and republic of Texas, of the first part, and Harvey Baldwin of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, aliened, remised, released, enfeoffed, and confirm, and by these presents doth grant, alien, remise, release, enfeoff and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described property, situated, lying and being in the said republic of Texas, to wit: Lots five (5) and eleven (11), in block six hundred and seventeen (617), and lot 12, in block 443, lots 13 and 14, in block 380, lot 12 in block 733, and lot 11 in block 622, all lying in the city of Galveston, and being a part of the Galveston City Company purchase and plat. Also the northwest quarter in block 43, in said Galveston City Company survey and plat. Also the following lots in the city of Houston, in said republic, to wit: Lot number ten, in block (81) eighty-one; lot one, in block six; lot eight, in block 27; lot eight, in block 26; lot six, in block 141; lot seven, in block 141; lot 8, in block 141; lot 9, in block 141; lots one, two, six, seven and twelve, in block twelve, and lots 3 and 4, in block 43, also in said city of Houston, all being according to surveys and maps made for A. C. Allen and others, reference being thereunto had. Also fifty-four lots in the village of Carolina, on the Trinity River, in said republic, reference being had to a deed executed to me, said Holman, by Mosely Baker, and also to a deed of conveyance to said Baker by Bailey & Gay. Also lots 4, 5, 6 and 7, in block number 45, in the town of Cuieva, situated on the Trinity River, in said republic. Also lot number 186, in the town of Texana, in said republic, being thirty varas in front and running back forty-five varas, reference being had to George Everett's deed to me, said Holman, dated 14th day of May, 1840, and to the maps thereof for same, will more fully appear. Also an equal undivided one hundredth part of the city of Houston, according to the original interest, plat and survey, and according to a contract made between A. C. Allen and said Baldwin for sale of same, reference being thereunto had. Also three shares of the Galveston City

Company, formerly owned by said A. C. Allen, and as the same existed in all things at the time were transferred to me, and with all the rights and privileges secured to said Baldwin by the contract of purchase between him, said Baldwin, and said Allen, reference being thereunto had. Also one league of land, situate on and near the Trinity river, in the county of Liberty, in said republic, and more particularly described as situated in the colony of Wehlin, and commencing at the southeast of the survey made for B. Garrett, in Targlinton Prairie, to the east of Trinity River, the title of possession to which having been issued to George Anthony Nixon, on the 14th day of Nov'r, 1835, reference being thereunto had, reference being also had to Doningo Ybarba's deed to John K. Allen for said land, dated 27th day of August, 1836, will more fully appear. Also a certain league of land conveyed to me, said Holman, by Miles F. Smith, on the 9th day of May, A. D. 1839; also one-quarter league of land also conveyed by said deed, all of which being situate on the Brazos River, in said republic, said one league of land being in Milam County, and said one-fourth league being in Robertson County, reference being had to said Smith's deed of conveyance to me for same, and to the original title deeds thereof, will more fully appear. Also a certain one hundred acres of land, situate on Galveston or Trinity Bay, and conveyed to me by William Richardson, on the 18th day of March, 1840, and situate in the county of Liberty, in said republic, and bounded as follows: Beginning at the southwest corner of said Richardson's large tract, purchased by him of William D. Smith, reference being had to said Smith's deed to said Richardson, at the point of intersection on the bay, a bank thereof, with Iries league and labor, and to extend northeast along said bay or bank so far that a line running west to the southwest line of said land, so purchased by said Richardson of said Smith, thence southwesterly along down the same to the place of beginning, will contain one hundred acres of land, reference being had to said Irnes survey. Also one league and labor of land, situated on the San Bernard, in said republic, and which was granted to Martin Jones, a colonist, the certificate of which is number 1094, is situated in Colorado County, the same having been conveyed to me, said Holman, by G. Everett, of Houston, reference being had to said certificate and said deed; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand, whatsoever, of the said party of the first part, either in law or equity, of, in and to the above granted premises, with the said hereditaments and appurtenances, to have and to hold the above mentioned and described premises, with the appurtenances, and every part and parcel thereof, to the said party of the second part, his heirs and assigns forever; and the said James S. Holman, for himself, his heirs, executors and administrators, doth covenant, grant, promise,

bargain and agree to and with the said party of the second part, his heirs and assigns, to warrant and forever to defend the above granted premises, and every part and parcel thereof, now being in the quiet and peaceable possession of the said party of the second part, against the said party of the first part, his heirs, executors, administrators and assigns, and against all and every person or persons claiming or to claim the said premises, or any part thereof.

In witness whereof the said party of the first part hath hereto set his hand and seal, the day and year first above written.

JAMES S. HOLMAN. [L. S.]

Sealed and delivered in the presence of

H. H. ALLEN.

United States of America, District of Maryland.

Be it remembered, and it is hereby certified that on this sixth day of January in the year eighteen hundred and forty-five, personally appeared James S. Holman, the party grantor within named, before me, Upton S. Heath, Judge of the United States, in and for the District of Maryland aforesaid, and acknowledged the within and foregoing instrument of writing to be his act and deed, according to the purport, true interest and meaning thereof. And I do further certify that at the same time and place it was satisfactorily proved to me by the oath of Moreau Forrest, Esq., marshal of the aforesaid district, that James S. Holman, professing to be the grantor in said deed, and as having signed the same, is the person therein particularly described and set forth as such grantor.

U. S. HEATH, District Judge.

The United States of America, District of Maryland, to wit.

I, Thomas Spicer, Clerk of the District Court of the United States, in and for the Maryland District, do hereby certify that the Honorable Upton S. Heath, before whom the foregoing acknowledgment was taken, was at the time of taking the same and now is judge of the United States, in and for the district of Maryland, duly commissioned and qualified, and that to all his acts as such full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of said District Court, this seventh day of January, in the year of our Lord one thousand eight hundred and forty-five.

[L. S.] THOS. SPICER, Dist. Clerk.

The State of Texas, Harris County.

Before me, A. P. Thompson, Chief Justice and ex-officio a notary public in and for the county of Harris, this day at my office came H. H. Allen, of this county, to me well known, who on oath declared that James S. Holman signed, sealed, and delivered the within and foregoing deed in his presence for the purposes, as he acknowledged,

therein contained; that he, the said Allen, signed the same as a witness, and recognizes all the signatures thereto as genuine.

Witness my hand and seal of the County Court at my office in Houston, this 26th March, A. D. 1846.

[L. S.] A. P. THOMPSON,
C. Justice H. Co., and ex-officio Not. Public.

Filed, 12 Oct., '46, at 9 A. M.; recorded 17, '46, at 10 A. M.
O. FARISH, Clerk.

The State of Texas, County of Galveston.

I, Oscar Farish, Clerk of the County Court of Galveston County, hereby certify that this and the foregoing six pages contain from the records of my office, Record F, pages 284 and 285, true copies of a deed from James S. Holman, to Harvey Baldwin, the certificates of acknowledgment and probate thereof, and the time of filing and registering the same.

In witness whereof I hereto subscribe my name and affix the seal of said County Court, at Galveston, this 20th day of February, A. D. 1857.

[L. S.] OSCAR FARISH, Cl'k.

Deed from Baldwin to Baker.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others. } Equity, No. 57.

The following transcript of deed from Harvey Baldwin to Wm. R. Baker, together with the certificates and stipulation attached, was offered in evidence at the hearing of this cause by complainant.

The same was objected to by defendants, so far as offered to affect the right of defendants to *to* show or imply any notice thereof to creditors or purchasers, because there was no title on record to said Baldwin, so as to put parties on inquiry of any deed from him.

And the court sustained the objection of defendants to said deed as constructive notice to them, but admitted the same in evidence to show the right of the parties and title to the property in controversy, and as competent evidence in the cause, and said deed was read in evidence. JAMES LOVE, Clerk.

Republic of Texas, city of Galveston.

Whereas, the following described lots of land situated in the city of Galveston were, on or about the 5th day of June, A. D. 1840, conveyed by the Galveston City Company to James S. Holman, in trust for me, Henry Baldwin, said Holman having no interest therein except as trustee; said lots of land being number five and eleven (5 and 11) in block six hundred and seventeen (617), lot number twelve (12) in block four hundred and forty-three (443), lot numbered eleven (11) in block six hundred and twenty-two (622), and lots thirteen and fourteen in block three hundred and eighty (380),

lot numbered twelve (12) in block seven hundred and thirty-three, according to a survey and map of city made for the Galveston City Company, reference being thereunto; and whereas said Holman did subsequently convey said lots to me, said Baldwin, and whereas I, said Baldwin, am desirous of appointing William R. Baker, Esquire, of the city of Houston, trustee of said lots, to hold the same in trust for me, said Baldwin, and subject to my order, direction and control; Now therefore, this Indenture, made the fourth day of June, A. D. 1845, witnesseth: that I, said Baldwin, for and in consideration of the premises, and of one dollar in hand paid, have and by these presents do grant, bargain, sell, remise, release, and by these presents convey unto said William R. Baker all my right, title and interest of, in and to said lots or parcels of ground. To have and to hold the same in trust for me, said Baldwin, and my legal representatives, and subject to my and their order and control as aforesaid. In witness whereof I, said Baldwin, have hereunto set my hand and seal the day and year above written.

HARVEY BALDWIN. [SEAL.]

The words "on or about the 5th day of June, A. D. 1840," written over the fifth line from the top before execution.

This day Harvey Baldwin, the signer and sealer of the foregoing instrument, appeared before me and acknowledged the same to be his act and deed for the purposes therein set forth.

Test, OSCAR FARISH, Clerk C. C. G. C.

Filed June 4th, 1845, at 10 A. M. Recorded June 4th, 1845, at 10½ A. M. O. FARISH, Cl'k C. C.

The State of Texas, county of Galveston.

I, Oscar Farish, clerk of the County Court of Galveston County, hereby certify that the above and foregoing is a true copy from the records of my office, Record E, page 290, of a deed in trust from Harvey Baldwin to Wm. R. Baker, the certificate of acknowledging thereof and the time of the filing and registering of the same.

In witness whereof I, Oscar Farish, clerk of said County Court, hereunto subscribe my name and affix the seal of [SEAL.] said court this the 20th day of February, A. D. 1857. OSCAR FARISH, Cl'k.

(*Stipulation.*)

(Referred to in the foregoing Deeds.)

We stipulate that the foregoing copies of deeds and certificates thereon may be read in evidence in the case of Harvey Baldwin *vs.* The Galveston City Company and others, now pending in the District Court of the United States for the District of Texas, with the same effect as the originals, if produced and proved, dated September 9th, 1857.

We do not admit that said deeds were properly admitted to record, and reserve all rights we may have as against said deeds for want of proper record, but the production and proof of originals are dispensed with and the above copies admitted as evidence.

JONES & BALLINGER,
For G. C. C., McK. & W.

F. H. MERRIMAN,
For Jos. Osterman.

We agree to the foregoing stipulation, reserving, however, the objection that H. H. Allen could not lawfully prove up the pretended deed from James S. Holman to Harvey Baldwin for record, and that said deed could not be proved in court as a valid deed.

H. N. & M. M. POTTER,
Solicitors for Christian Dieckman.

R. H. HOWARD,
Sol'r for Illies and wife, and infant Antoniette Officier.

Deposition of Pryor Bryan.

HARVEY BALDWIN, Complainant,
vs.
THE GALVESTON CITY COMPANY and others, Defendants.

No. 57. In Equity.

The following deposition of Pryor Bryan, and exhibits thereto, were read in evidence at the hearing of this cause, by the complainant.

When the same was offered in evidence, the defendants objected severally to the second, third, fourth, and fifth interrogatories, and the answer thereto, on the ground that each of said interrogatories was leading, and suggestive of the answers to the witness.

The answer to the fifth direct interrogatory was also objected to on the ground that the witness does not answer upon his recollection or knowledge of the facts, but solely on the memorandum exhibited to him. All which objections to said interrogatories and answers were overruled by the court. JAMES LOVE, Clerk.

(*Interrogatories.*)

District Court of the United States, District of Texas.

HARVEY BALDWIN, Complainant,
vs.
THE GAL. CITY CO. and others, Defendants. } In Equity.

Interrogatories to be propounded to Pryor Bryan, a witness to be examined on the part of the complainant in the above cause, said witness residing at Liberty, in the State of Texas.

Interrogatory 1st. What is your age and place of residence, and were you sheriff of the county of Galveston in the summer and fall of 1846?

Interrogatory 2d. Will you state whether as sheriff of the county of Galveston, in the month of October, 1846, you sold on an execution in favor of McKinney and Williams, against James S. Holman, issued from the District Court of Harris County, the following lots in the city of Galveston, to wit:—

lots	5 and 11	in block	617
lot	12	in block	443
lots	13 and 14	in block	380
lot	12	in block	733
lot	11	in block	622

If you say you sold said lots on the above named execution, please state the time and place of such sale, and also who bid off said lots, and also state whether the persons bidding off said lots did it as agent for others, or how otherwise. Please state fully as to the particulars of said sale.

Interrogatory 3d. Will you state whether Pizarro Edmunds was present at said sale, and also whether he was acting or did act as the agent of plaintiff in the execution, or as agent of Thomas F. McKinney, one of said plaintiffs in execution?

Interrogatory 4th. Will you also state whether Andrew J. Yates (now deceased), attended said sale as the agent of William R. Baker, or of Harvey Baldwin, complainant? If you answer in the affirmative, please state what Yates did and said on this occasion, and whether or not he notified yourself and the persons assembled at said sale, that the foregoing property offered for sale, was the property of Harvey Baldwin, and not the property of James S. Holman. If not, how otherwise, and what notice, if any, did said Yates give? State fully and particularly.

Interrogatory 5th. Please examine the instrument in writing herewith showed to you, signed W. R. Baker, and dated October 1st, 1846, and purporting to be a notice that the lots hereinbefore mentioned were the property of Harvey Baldwin. Do you recognize said notice as the one you read to the persons and bystanders on said sale, and previous thereto? And did you endorse and sign the memorandum on the reverse side of the paper, and is said memorandum true in point of fact? State particularly all you know about said notice, and the reading of it to the persons assembled on said sale, and by whom you were requested to read it, and to whom did you deliver it after making and signing the memorandum on the back of it. (The officer will please mark and certify the paper as an exhibit, and return the same with the deposition.)

Interrogatory 6th. Do you know any other matter or thing that may be of advantage to complainant or defendants, or either of them? If so, state it fully and particularly, the same as if you were specially interrogated thereto.

SHERWOOD & GODDARD,
Solicitors and of Counsel for Compl't.

(*Stipulation.*)

We hereby stipulate that the witness, Pryor Bryan, may be examined by any officer authorized to take and return testimony in this court, on the foregoing interrogatories and the following cross-interrogatories, at any time hereafter without commission or further notice, reserving all questions as to the competency of the proof.

Dated September 10th, 1857.

BALLINGER & JACK,
Solicitors and of Counsel for the Galveston City Company, and McKinney and Williams.
H. N. & M. M. POTTER,
Solicitor for Dieckman.
F. H. MERRIMAN,
Solicitor for Osterman.
R. H. HOWARD,
Solicitor for Illies and Wife.
R. H. HOWARD,
Solicitor for Infant, Antoniette Officiers.

(*Cross-interrogatories.*)

United States District Court, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY et al.

Cross-interrogatories propounded by defendants to Pryor Bryan, a witness for complainant in said cause.

1st cross-int. If you answer the 2d direct interrogatory in the affirmative, then state how you know the facts.

2d cross-int. If you answer the 4th and 5th direct ints. in the affirmative, then state whether any notice that the property was claimed by Harvey Baldwin was given by you or any other person present, after the bidding for the property commenced. Do you know how many and which of the defendants was present when said notice was given either by you or A. J. Yates? If yea, name them.

3d cross-int. If you state that you sold any of the lots named in the 2d interrogatory to Christian Dieckman, state the number of the lot or lots, and the amount paid to you by said Dieckman for the purchase money of said lot or lots, and the time when the payment was made.

H. N. & M. M. POTTER,
Solicitors for Christian Dieckman.
F. H. MERRIMAN,
Solicitor for Joseph Osterman.
JONES & BALLINGER,
Solicitors for Galveston City Co., and McKinney & Williams.
R. H. HOWARD,
Solicitor for Illies and wife, and infant Antoniette Officiers.

(*Deposition.*)

United States District Court, Eastern District of Texas.

HARVEY BALDWIN, Complainant,
vs.
The GALVESTON CITY COMPANY and others, Defendants. } In Equity.

Be it remembered, that by virtue of the acts of Congress of the United States, I, Christopher Bryan, a notary public in and for the county of Liberty, residing in said district, duly commissioned and qualified, have this 7th day of November, A. D. 1857, caused to come before me, Pryor Bryan, a witness on the part of complainant, and that said witness, after being by me first carefully examined, cautioned and sworn to testify the whole truth and nothing but the truth, did answer and depose to the annexed interrogatories and cross-interrogatories as follows, that is to say:—

In answer to the first interrogatory witness says: I am forty-seven years of age; my residence is Liberty County, Texas.

Int. 2d. I made sale of several lots in the city of Galveston under the execution referred to, as sheriff of Galveston County, but I cannot state anything definite in relation to dates or No. of lots, but refer parties to my written acts in the premises, to show when and where the sale took place, what lots were sold, and who were the purchasers.

Int. 3d. I think Pizarro Edmunds was present at the sale, and to the best of my recollection he acted as agent for Thomas F. McKinney.

Int. 4th. I do not recollect whether Andrew J. Yates was present on the day of sale or not.

Int. 5th. I recognize the instrument of writing signed W. R. Baker, and dated October 1st, 1846, as being one which was in my possession at the time of said sale, but do not recollect whether it was read or not, but feel assured that it was, from the fact of my having certified thereto on the back of said instrument, the signature to which certificate I recognize as my own. I do not know to whom I delivered the instrument after signing the certificate on the back of it.

Int. 6th. I have stated all I know in relation to the matter.

In answer to 1st cross-int. witness says: I have a distinct recollection of making the sale referred to some time in the fall of 1846.

Cross-int. 2d. As I have before stated I believe that Pizarro Edmunds was present as agent of McKinney, but I do not recollect that any of the defendants were present on the day of sale.

Cross-int. 3d. As I have before stated, I do not know from my recollection that Christian Dieckman was a purchaser at said sale, but refer the parties to the annexed receipt, which I recognize as my act and which I believe sets forth the facts. P. BRYAN.

And I further certify that the answers of said witness to the said direct and cross-interrogatories were written down by me and subscribed by said witness as his sworn testimony in said cause, and to be used in the hearing on trial thereof; and I further certify that I am not of counsel or attorney to either of the parties in said suit, nor in any way interested in the event thereof, and further that I have retained said deposition in my possession for the purpose of sealing and directing the same with my own hand, and forwarding it to the court where said cause is pending for trial.

In testimony whereof I hereunto sign my name and affix the impress of my official seal, this 7th day of November, A. D. 1857.

[L. S.] P. BRYAN,
Notary Public in and for Liberty County, Texas.

(*Exhibit marked A.*)

To the sheriff of Galveston County.

Sir: The property herein described having been advertised for sale by you, as levied upon by virtue of an execution issued upon a judgment obtained in the District Court of your county, by Thomas F. McKinney *vs.* James Holman, you are hereby notified that the same is claimed by me in trust for Harvey Baldwin, by virtue of a deed of said Baldwin to me, duly recorded in Galveston County, that the said property was never vested in said Holman, except as a trust for said Baldwin, and at the sale of the same you will please give notice to that effect, and that any title obtained to said property, or any part thereof, under such sale, will be contested by said Baldwin. (The following is the property alluded to.) Lots five (5) and eleven (11), in block (617) six hundred and seventeen; lot (12), in block (443) four hundred and forty-three; lots thirteen (13) and fourteen (14), in block (380) three hundred and eighty; lot twelve (12), in block (733) seven hundred and thirty-three; lot eleven (11), in block (622) six hundred and twenty-two.

October 1st, 1846. W. R. BAKER.

This notice was read by me on the day I proceeded to the sale of the within lots to the persons assembled at the sale.

P. BRYAN, Sheriff G. C.

I certify that this document marked Exhibit "A" is the identical one referred to by the witness in his answer to the 5th direct interrogatory, and is annexed as a part of his answer to said interrogatory.

P. BRYAN,
Notary Public in and for Liberty County, Texas.

Exhibit marked B.

Rec'd, Galveston, Oct. 6th, 1846, of Christian Dieckman, two hundred and five dollars, for which I will convey to him all the right, title, and interest of James S. Holman in and to lot number eleven

(11), in block number six hundred and seventeen (617), in the city of Galveston, said lot having been sold by me at public auction on the 5th inst., and by virtue of an execution in favor of McKinney and Williams *vs.* James S. Holman.

P. BRYAN, Sheriff G. C.

I certify that the annexed document, marked Exhibit B, is the identical one referred to by the witness, P. Bryan, in his answer to the 3d cross-interrogatory, and the same is thereto annexed as a part of his answer to said cross-interrogatory.

P. BRYAN, Not. Public G. C.

Admission on the Hearing.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others.

U. S. District Court. In Chancery.

On the trial of this cause it was admitted and agreed by both parties that the Galveston City Company was a duly incorporated body, authorized to hold real estate, and that at the time the certificates for lots named and set forth in plaintiff's bill were issued by said company, the title to said lots was vested in said company by a regular chain of title from and under the sovereignty of the soil of Texas.

It was further admitted and agreed, that deed No. 114 from the Galveston City Company to James S. Holman, mentioned in answer to 13th int. in Borden's deposition, was issued by said Company and delivered to said Holman, and was recorded in the registry of deeds for Galveston County in the county clerk's office.

Also that each of the lots in controversy in this suit exceeds in value two thousand dollars.

Also that the certified copies of the certificates from the Galveston City Company, and of transfers thereon, made out by James P. Cole, agent of said Company, and attached to the deposition of Gail Borden, are correct copies of the originals, and they were read in evidence as such. It was admitted by defendants that no deed from the Galveston City Company to James S. Holman for the lots in controversy had ever been presented for record to the county clerk of Galveston County, or any of his deputies, and no such deed is on record in Galveston County.

Evidence of Lorenzo Sherwood.

On the trial of said cause, Lorenzo Sherwood, Esq., was sworn as a witness on behalf of the complainant, and testified as follows: That at the time of filing the bill in this cause, or rather a few days previous, he received from Andrew J. Yates the notice attached to the deposition of Pryor Bryan. Witness was informed that Yates

had acted as the agent of Baldwin in having this notice given, and the notice was delivered by Yates to witness in that character. The body of the notice is in Yates' handwriting—the signature is that of William R. Baker. Yates removed to California some years since, and died there several years ago.

Testimony of James P. Cole.

The complainant also introduced as a witness James P. Cole, Esq., who testified as follows:—

I am agent of the Galveston City Company, have been since June, 1854; succeeded Gail Borden as agent, though for a time preceding me John P. Borden acted as agent *pro tem.*

Had occasion to examine the records of the Galveston City Company in 1839, and from that time had some knowledge of the affairs of said company.

At the time the certificates, which are the subject of controversy in this case, were issued by the organic law of said company, the Board of Directors consisted of five members, three of whom had the power to make and execute valid deeds, and the custom was for the agent to countersign them. This was the law of the company up to 1850 or 1851, when it was changed, and deeds have been since issued under the signature of the president of the company, countersigned by the agent. Said company were the proprietors of the league of land on which the city of Galveston is built, and its business had always been to sell or convey the lots into which the same was divided.

The envelope attached to the deposition of Gail Borden and now produced to witness, is the same in which the original certificates were enclosed. The endorsements on said envelope, including the figures thereon and the words "In Trust," are in the handwriting of Gail Borden. The certificates remained in the office in said envelope after I became agent, until taken out tc make copies to attach to Borden's deposition; said envelope was then taken by Mr. Sherwood to attach to said Borden's deposition. The agent of the company has never been authorized to execute deeds to purchasers of lots.

(*Cross-examined.*)

When the company was first organized there was some defect in the authentication of its chain of title, and it was not proposed to issue deeds to purchasers of lots, and certificates of purchase were issued to those purchasers similar to those in this case. Afterwards the company were prepared to issue deeds; and whenever the holder of a certificate wished a deed, he produced his certificate to the company and delivered up the same, and the company issued a deed to him. The certificate was then filed away in the records of the company. Books were kept showing the issuance of deeds upon the certificates by memorandum entered against the number of the lot. All the certificates in this case were filed away in the records of the

company in the same place and manner with the certificates upon which deeds had been issued. The books and records of the company bear the same evidence of the issuance of a deed to Holman on these certificates that they do of the issuance of any deed whatever. If the records of the company are true, a deed issued to Holman. The memorandum No. 113 on the envelope indicates that that was the number of the deed issued on the certificates. No other deed No. 113 was ever issued. Upon the production of the certificates and assignments in this case by Holman, a deed would have issued to him in fee simple. Had he requested the deed to show a trust for any other persons, presumes the company would have so issued it. The company only see its own title to lots. Has never acted as agent for others or hold property as a trustee. If Borden held certificates in trust, it was wholly disconnected with his character as agent of the company. The witness being asked if he knew anything further connected with the subject, said that at the time that the signatures of three directors to deeds was necessary, it was for a while the practice to take a number of deeds together to the store of Briggs & Yard, as a more central and convenient place for the directors to sign them, and in this way some deeds had been lost in transitu before reaching the grantees, and duplicates issued by the company.

He said further, on direct examination resumed, that he had never seen any deed for these lots, and had no other knowledge of any than that afforded by the papers. That not knowing any of the circumstances, of his own knowledge, from an examination of the memoranda endorsed on the envelope in which these certificates were inclosed, he would have concluded that this property was held in trust for somebody, and that James S. Holman was the trustee; but that upon the presentation of the certificates (in the envelope) and the requirement of a deed, he thinks it would have issued absolutely to Holman, and not in trust, unless the contrary was requested.

The holder of a certificate of the purchase of a lot from the City Company, having paid the purchase money, has always been regarded and recognized as virtually the owner of the lot therein named, and entitled fully to the possession, use, and control of the lot. Some of the earliest purchasing, still hold by certificates. Witness does not mean that the certificate is a legal title, or has ever been regarded so. The certificate gives a right to a deed or legal title from the City Company whenever demanded.

Testimony of L. M. Hitchcock.

The complainant also introduced as a witness, L. M. Hitchcock, who was sworn, and testified.

Has resided in Galveston 23 years. Knew Pryor Bryan. In Oct., 1848, witness was present at a sheriff's sale, made by said Bryan in a judgment in favor of McKinney and Williams against Holman. I think I remember seeing P. Edmunds and A. J. Yates there. Pre-

vious to the sale a notice was read by the sheriff or Mr. Yates to the purport that there was another claimant of the property—I think Mr. Baldwin. Thinks the notice now shown him (being that annexed to Bryan's deposition) was about the same, and that the signature thereto is Pryor Bryan's handwriting. The notice was read out at the sale in a manner that all present might hear.

(*Cross-examined.*)

A. F. James and Wm. H. Sandusky were as good judges of property in Galveston at the time of that sale, as any men I know. Since 1850 I have frequently heard that Baldwin claimed the property. Previous to that I had heard the same rumor, though I cannot state positively that I had heard of Baldwin's claim. I was casually at the sale—stayed but a short time—left before it was completed. A number of lots were sold; remember the advertisement was of several lots. The notice was read before the sale commenced—cannot state how long before. Did not hear it read but once. The sale took place in front of my store-house, where court was then held. Saw a gathering of persons there. It was as common and public a thoroughfare as any in the city of Galveston. Thinks it was in the forenoon towards mid-day when I heard the notice read. Know the defendant Christian Dieckman, he is a native German. Did not see him at the sale. Was at that time well acquainted with him, and had been a long time. The German language is his mother tongue, and at that time he spoke English very imperfectly. Dieckman did not at that time understand the English language well enough to understand the notice which was given or its object; Germans not well acquainted with our language do not understand it as well when they hear it read as when they hear it spoken distinctly to them. Dieckman is a very simple old man. The notice was not translated into German; the sheriff did not understant German. A large part of the population of Galveston was German.

Testimony of Pizarro Edmunds.

Pizarro Edmunds called as witness by Antoniette Officiers, and proved the possession of lot No. 5 in block 617 in Officiers from the fall of 1847 in winter of '46–47, and that said lot was enclosed and occupied by Officiers as part of his lumber yard, soon after the date of his purchase from Osterman.

The complainant then proved by Pizarro Edmunds that the deeds from the sheriff to McKinney and to Dieckman are in the handwriting of sheriff Bryan. The deed from McKinney to Osterman is in witness' handwriting, and he is a witness to it. That from Osterman to Officiers is in handwriting of Oscar Farish. Is subscribing witness thereto, and also to the deed to Illies, and to Gail Borden's certificate; the latter is also witnessed by J. A. Swett. I bought the judgment against Holman from McKinney. Don't recollect what I agreed to pay for it; but a sum far less than the full amount.

I had execution issued and the property sold out and bought in, most of it in the name of McKinney. After the sale McKinney sent me word by his brother that he did not understand me as having bought the judgment. I saw that he had me, and concluded to compromise the best way I could. I agreed to divide with him the proceeds of the sales of the property. Witness said he was certain that at the time of obtaining this certificate from Borden, that the books of the Galveston City Company did not show that any deed had been executed to Holman for these lots—that witness himself examined the books of the company, and the books showed that no deed had then been issued. Witness states most distinctly that he examined the books at the time of getting Borden's certificate, and there was then nothing to show on the books that a deed had been issued, and he (witness) told Swett, and they went to the office and made another examination together of the books, and there was nothing to show on them that a deed had been issued. In this matter he cannot be mistaken, for it was deemed an important point by witness and Swett, who was his attorney. The title by certificates at the time appeared to be in the name of Holman. Nothing was told him to the contrary until the day of sale, when Yates told witness that he must not sell, that the title of the lots was owned by Harvey Baldwin, and the sale under the execution would be resisted.

To the evidence of Edmunds as to what the books of the City Company showed or did not show, defendants objected, because it was not the best evidence; the books should be produced, and the witness was swearing to his own conclusions; but the objection was overruled by the court.

Witness further stated that when they got the certificate he told Swett they had caught a smart man (meaning Borden) in his own trap. The county records did not show any deed to Holman, nor did Borden say a word about the certificates or lots being held in trust for Baldwin or any one else. I never knew or had any information that Baldwin claimed any right to the lots until just before and on the day of the sheriff's sale, when A. J. Yates told me they belonged to Harvey Baldwin, and that the sale would be resisted. I didn't believe Baldwin had any interest in the lots. I don't recollect the sheriff's reading any notice at the sale.

(*Defendants' Evidence.*)

Transcript from Harris County.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. and others. } In Equity. No. 57.

The annexed and following transcript from the District Court of Harris county was read in evidence by the defendants on the hearing of the above cause. JAMES LOVE, Clerk.

The State of Texas, county of Harris.

At a term of the District Court begun and holden at the court-house in the city of Houston, within and for the county of Harris, on the 4th day of May, A. D. 1840, before the Hon. A. B. Shelby, judge thereof, the following cause came on for trial, viz:—

THOMAS F. McKINNEY and SAMUEL M. WILLIAMS vs. JAMES S. HOLMAN. } Petition filed 18th Nov., 1839.

To the Honorable John Scott, judge of Second Judicial District. The petition of Thomas F. McKinney and Samuel M. Williams, merchants and partners jointly in trade, under the firm and style of McKinney & Williams, represent that James S. Holman, a citizen of Harrisburgh County, is indebted unto them in the sum of ten thousand nine hundred and fifty-four dollars and fifty-nine cents, with interest. For that the said defendant heretofore, to wit, on the twenty-eighth day of April, eighteen hundred and thirty-eight, at Houston, to wit, the county of Harrisburgh, made his certain note in writing in words and figures as follows:—

Houston, 28th April, 1838.

On or before the *eigthth* (meaning 8th) day of June next, for value received, I promise to pay to McKinney & Williams (meaning petitioners) or order, ten thousand nine hundred and fifty-four dollars, $\frac{49}{100}$, in military scrip of the Republic of Texas.

JAMES S. HOLMAN.

And then and there delivered said note to said petitioners, and thereby became liable to pay the sum aforesaid specified in said note according to the law and effect thereof. Yet petitioners aver, that although payment of the same has been demanded, yet that defendant has and still refuses to pay the same. Wherefore petitioners pray that process may issue requiring said defendant to be and appear at the next District Court to be holden in and for Harrisburgh County, and that he be decreed and adjudged to pay the sum set forth in said note, and also interest and costs thereon, and also all that is equitable and just in said premises, &c. &c.

LOVE & REILY.

(*Admission of Service on Petition.*)

Due and legal service of the within acknowledged, and copy of petition and writ waived. J. S. HOLMAN.

(*Note.*)

Houston, 28th April, 1838.

On or before the *eigth* day of June next, I promise to pay to McKinney & Williams, or order, ten thousand nine hundred and fifty-four dollars, $\frac{49}{100}$, in military scrip of the Republic of Texas.

$10,045\frac{49}{100}$. JAMES S. HOLMAN.

Endorsed: McKinney & Williams.

(*Extract from the Minutes of the District Court for Harris County, at Spring Term*, 1840.)

Wednesday morning, June 17, 1840. Court met pursuant to adjournment. Hon. A. B. Shelby, presiding.

McKINNEY & WILLIAMS vs. JAMES S. HOLMAN. } No. 361.

This day come the parties aforesaid, by their attorneys, and waived the right of trial by jury and submitted the cause to the court for adjudication. It is therefore considered by the court that the plaintiffs have and recover of the defendants the sum of three thousand two hundred and eighty-six dollars and twenty-five cents, the debt in the petition named, with the sum of two hundred and thirty-one dollars and sixty-two cents damages for the detention thereof, amounting to three thousand five hundred and seventeen dollars and eighty-seven cents, as also all costs by them about this suit in their behalf expended.

Fi. Fa. issued 31st July, 1840. Endorsed on the back by clerk as follows, viz: 90. District Court to Fall Term, 1840. McKinney and Williams *v.* James S. Holman, Fi. Fa. Judgment 17th June, 1840. Debt 3286 25. Damages 231 62, 3517 87. Clerk, Holman, 11 25. County tax 3 00. Atto. tax 10 00, 3542 12. Love and Reilly.

Republic of Texas.

To sheriff of Harris County, greeting:—

Whereas Thomas F. McKinney and Samuel M. Williams, merchants, and the firm of "McKinney & Williams," on the seventeenth day of June, in the year of our Lord A. D. eighteen hundred and forty, at our District Court for Harris County, hath recovered against James S. Holman the sum of three thousand two hundred and eighty-six $\frac{25}{100}$ dollars debt, and two hundred and thirty-one $\frac{62}{100}$ dollars damages, also $24\frac{25}{100}$ costs, for debt, damages, and costs, and which to the said McKinney & Williams now adjudged. These are therefore to command you that of the goods and chattels and estates of the said James S. Holman, you cause to be made the full amount of this execution, after deducting therefrom the legal fees and commissions for collecting the aforesaid amount, and that you have there this writ at the clerk's office of said court on the return day hereof, certifying how you have executed the same.

[L. S.] Given under my hand this thirty-first day of July, 1840; issued the 31st day of July, 1840.

JAMES S. HOLMAN, Clerk.
By JOHN V. COWLING, Dep. Cl'k D. C. H. C.

Clerk's fees, writ and petition, $2 00. Docketing, 25 c. Filing

4 papers, 50 c. Entering 2 appearances, 50. Entering 2 orders, 75. Entering 2 motions, 75. Entering judgment, 75. Record after final judgment, 4 00. Execution, 1 00. Taxing costs and copy, 75. Attorney's tax fee, 10 00. County tax, 3 00. $24 25

$24 25

(*Sheriff's Return.*)

Received August 4th, 1840; returned not satisfied, having found no property of the defendant in this county, and none pointed out to me by the plaintiff in this case, whereupon to levy this execution upon to make the money out of by me. Dec. 5th, 1840.

Sh'ff fee, 75 c.

JOHN W. MOORE, Sh., by Gro. R. C.

(*Fi. Fa. for costs issued 11th day of Feb.*, 1844.)

Republic of Texas, County of Harris.

District Court, Spring Term, 1840.

To the sheriff of Galveston County, greeting:—

You are hereby commanded that of the goods and chattels, lands and tenements, rights and credits, of Thomas F. McKinney and Samuel M. Williams, of your county, you make, or cause to be made, the sum of twenty-six dollars and twenty-five cents, to satisfy the costs accruing in the case wherein McKinney and Williams is plaintiff, and James S. Holman is defendant, which said costs was adjudged to the said James S. Holman. Use of officers of court at the spring term 1840, term of this honorable court, and whereof the said McKinney and Williams is convicted, as appears to us of record, and have you the said moneys at the next term of this court, as well as all other costs herein accruing. Herein fail not under the penalty of the law, and have you then there this writ.

Witness the Hon. A. B. Shelby, judge 10th judicial district.

[L. S.] Given under my hand and seal of the court at my office in Houston, this 11th day of February, A. D. 1841. Issued the 11th day of February, A. D. 1841.

F. R. LUBBOCK, Clerk.

Clerk's fees, writ and petition, 2 00. Docketing, 25. Filing 6 papers, 75. Entering 2 appearances, 50. Entering 2 orders, 75. Entering 2 motions, 75. Entering judgment, 75. Record after final judgment, 4 00. 2 executions, 2 00. Taxing cost and copy, 75 c. Attorney tax fee, 10 00. County tax, 3 00. $25 50

Sheriff's fees returning execution, 75

$26 25

(*Entry on Execution.*)

An execution issued in this case on the thirty-first day of July,

A. D. 1840, against the defendant, and returned "no property found," and now issued against plaintiff for costs.

F. R. LUBBOCK, Clerk.

The amount of costs due upon this execution is for the use of John Shackleford, jr. E. H. WINFIELD, Deputy Clerk.

(*Return.*)

Rec'd March 18, 1841: levied on lots 1 and 2, with appurtenances, in block 504, Galveston, April 20, 1841. Not sold for want of time. H. M. SMYTH, Sheriff G. Co.

Entry by clerk. Rec'd in clerk's office from sheriff, May 1, 1841.

(*Alias Fi. Fa., issued June* 2, 1844.)

Republic of Texas, Harris County.

To the sheriff of Galveston County, greeting:—

Whereas at a District Court begun and held in and for the county aforesaid, on the 17th day of June, A. D. 1840, Thomas F. McKinney and Samuel M. Williams, merchants, under the firm name of McKinney & Williams, by the judgment of said court, recovered against James S. Holman, the sum of three thousand two hundred and eighty-six $\frac{25}{100}$ dollars debt, and two hundred and thirty-one $\frac{62}{100}$ dollars damages, as also the further sum of twenty-four $\frac{25}{100}$ dollars for his costs in that behalf expended, as of record is manifest; and whereas execution issued thereupon to the sheriff of Harris County on the 31st day of July, A. D. 1840, and was returned not satisfied, no property of defendant's found in this county, as by the return thereupon of John W. Moore, the sheriff, manifestly appears; therefore you are hereby commanded, that of the goods and chattels, lands and tenements of the said James S. Holman, you cause to be made the debt, damages, interest, and costs aforesaid; and have you those sums before said court, to be held at the court-house in said county, on the second Monday after the fourth Monday of September next, 1844, to render unto the said McKinney and Williams. Herein fail not under the penalty of the law, and have you then there this writ.

Witness F. R. Lubbock, clerk of the District Court aforesaid, at office in Houston, and seal of said court, this 22d day of June, A. D. 1844.

[L. S.] F. R. LUBBOCK, Clerk,
By WM. F. WEEKS, D. C. D. C., H. C.

Bill of costs—Writ of petition, 2 00; docketing, 25; filing papers, 50; entering motions, 75; entering orders, 75; entering judgment, 75; final record, 4 00; execution, 1 00; tax costs and copy, 75; attorney's tax fee, 10 00; county tax, 3 00; $24 25
Sheriff Moore, exeg's, 75
Clerk Lubbock, alias executions, 1 50

$26 50

(*Return.*)

Received June 26, 1844: levied on lot number twelve, in block No. four hundred and forty-three, in the city and county of Galveston, pointed out by pl'ffs, Sept. 7, 1844; advertised said lot for sale by posting up notices in three public places in the county of Galveston, as prescribed by law, to sell on the first Tuesday in October, A. D. 1844. Sept. 9, 1844, offered said property for sale at the court-house door of Galveston County, and sold the same to McKinney and Williams for the sum of one hundred and thirty-five dollars, the highest and best bid offered, and more than two-thirds of the appraised value of said lot; made no deed to said lot, costs not being paid, Oct. 2, 1844. H. M. SMYTH, Sheriff G. Co.

(*Appraisement attached to Alias Fi. Fa.*)

Republic of Texas, county of Galveston.

JAMES S. HOLMAN
vs.
McKINNEY and WILLIAMS, Alias Fi. Fa.

We, the appraisers, appointed on the part of the plaintiffs and defendant in the cause above cited, to appraise lot number twelve (12), in block number four hundred and forty-three (443), in the city of Galveston, levied upon in the cause above cited, as the property of defendant. Having been duly sworn by the sheriff of said county, do appraise the same at the sum of two hundred dollars.

Witness my hand this first day of October, A. D. 1844.

J. S. LYDNER,
JOS. OSTERMAN.

(*Plu. Fi. Fa., issued September* 2, 1846.)

The State of Texas, Harris County.

To the sheriff of Galveston County, greeting:—

Whereas at a District Court, begun and held in and for the county aforesaid, on the 17th day of June, A. D. 1840, Thomas F. McKinney and Samuel M. Williams, merchants under the firm name of McKinney and Williams, by the judgment of said court, recovered against James S. Holman the sum of three thousand two hundred and eighty-six $\frac{25}{100}$ dollars debt, and two hundred and thirty-one $\frac{62}{100}$ dollars damages, as also the further sum of $\$24\frac{25}{100}$ dollars for his costs in that behalf expended, as of record is manifest. And whereas execution issued thereupon, to the sheriff of Harris County, on the 31st day of July, A. D. 1840, and were returned not satisfied; no property of the defendant found in the county, as by the return thereupon of Jno. W. Moore, then sheriff, manifestly appears; and whereas an alias execution was issued and directed to the sheriff of Galveston County, who returned the same, levied upon lot No. 12, in block No. 443, Galveston, which was sold to McKinney and Williams,

for $135 00, who failing to comply with the terms of sale, no deed was executed.

Wherefore, you are again hereby commanded that of the goods and chattels, lands and tenements of the said James S. Holman, you cause to be made the debt, damages, interest and costs aforesaid. And have you these sums before said court, to be held at the court-house in said county, on the 2d Monday after the 4th Monday in October next, to render unto the said McKinney and Williams. Hereof fail not, under the penalty of the law, and have you then there this writ.

Witness, F. R. Lubbock, clerk of the District Court aforesaid, at office in Houston, and seal of said court, this second day of September, A. D. 1846.

[L. S.]

F. R. LUBBOCK, Clerk.
By JOHN FIZGERALD,
Dep. Cl'k, D. C., H. C.

Bill of Costs.

Writ and copy of petition, 2 00; docketing, 25; filing papers, 50; entering motions, 75; entering orders, 75; entering judg't, 75; final record, 4 00; taxing costs and copy, 75c; execution, 1 00; attorney's tax fee, $10 00; county tax, 3 00.	$24 25
Sheriff Moore ret. execu.	75
Clerk Lubbock alias execution and record	1 50
Do do plu. do do	1 50
	$28 00

(*Return of Sheriff.*)

Received September 4th, 1846, and executed same day, by levying on lot five (5), in block six hundred and seventeen (617); lot No. eleven (No. 11), in same block; lot No. thirteen and fourteen (No. 13 and 14), in block No. three hundred and eighty (No. 380); lot No. thirteen (No. 13), in block No. six hundred and seventy-one (No. 671); lot No. twelve (No. 12), in block No. seven hundred and thirty-three (No. 733); and lot No. eleven (No. 11), in block No. six hundred and twenty-two (No. 622), being property pointed out by Thomas F. McKinney, one of the plaintiffs, and situated in the city and county of Galveston; advertised same for sale September 7th, according to law. Also levied upon lot No. 12, in block No. 443, pointed out by plaintiffs, and advertised for sale same day. All which property was advertised to be sold with appraisement, on Tuesday the 6th day of October, 1846, it being the first Tuesday in the month. And on said first Tuesday, said lots were appraised according to law, by A. F. James and Wm. H. Sandusky, as follows, viz: lot 5 in block 617, at two hundred dollars; lot 11 in same block, at one hundred and fifty dollars; lot 13 in block 380, at one hundred and seventy-five dollars; lot 14 in same block, at two hundred dollars; lot 13 in block 671, at one hundred dollars; lot

12 in block 733, at one hundred dollars; lot 11 in block 622, at seven hundred dollars; and lot 12 in block 443, at three hundred dollars; which said lots having been respectively offered for sale at public auction before the court-house door, and on said first Tuesday in October, between the hours prescribed by law, four of them, to wit, lot No. 5, in block No. 617; lot No. 12, in block No. 733; lot No. 11, in block No. 622; and lot No. 12, in block No. 443, were respectively struck off, and by me adjudged to Thomas F. McKinney, for the sum of thirteen hundred dollars ($1300 00), bid by P. Edmunds, agent, duly authorized in writing to act for said McKinney, and plaintiffs in the premises, the same being the appraised value, and more than any other person did or would bid; two of said lots, to wit, lots numbered 13 and 14, in block 380, were severally struck off, and adjudged by me to Louis Junemann, having bid the sum of one hundred and eighty-five dollars for the former, by P. Edmunds, agent, and two hundred (and five¿) dollars for the latter in person, making in all, the sum of three hundred and ninety dollars, being more than the appraised value, and more than any other person did or would bid; one of said lots, to wit, lot number 13, in block number six hundred and seventy-one (671), was struck off, and by me adjudged to Gustavus A. Fiess, he having bid the sum of one hundred dollars, that being the appraised value of the same, and more than any other person did or would bid. And one of said lots, to wit, lot number (11), in block number six hundred and seventeen (617), was struck off, and by me adjudged to Christian Dieckman, he having bid the sum of two hundred and five dollars $205, it being more than any other person did or would bid, and being more than the appraised value, making in all, the sum of nineteen hundred and ninety-five dollars, seventy-three $\frac{45}{100}$ dollars of which is applied to the payment of the costs, and nineteen hundred and twenty-one and $\frac{55}{100}$ dollars to debt. The terms of the sale having been complied with in each case, deeds were executed to the several purchasers according to law, and the proceeds of sale paid to the plaintiffs in execution. P. BRYAN, Sheriff of G. C.

Commissions,	$31 95
Levy and return,	1 50
Executing 6 deeds,	12 00
	$45 45

(*Appraisement.*)

McKINNEY and WILLIAMS vs. JAMES S. HOLMAN. } Plu. Fi. Fa.

In Harris County Dist. Court.

By virtue of a plu. fi. fa. to the sheriff of Galveston County directed, by the clerk of the District Court of the county of Harris, on

the 2d day of September, 1846, in the above entitled case, the following described lots in the city of Galveston were levied upon by the said sheriff on the 7th Sept., 1846, as the property of def't Holman, pointed out by pl'ff's agent, to wit: Lots No. 5 and 11 in Block No. 617; lots No. 13 and 14 in block No. 380; lot No. 13 in block No. 671; lot No. 12 in block No. 733; and lot No. 11 in block No. 622. And also on the 15th September, 1846, on lot No. 12 in block No. 443, also pointed out by pl'ff's attorney as the property of def't, and advertised said lots for sale with appraisement, in accordance with law, for the first Tuesday in October, at the court-house door of said county of Galveston, at which time and place the plaintiff's agent appointed Alfred F. James on the part of said pl'ff, to appraise the aforesaid property, and the said sheriff appointed Wm. H. Sandusky appraiser on the part of defendant in said execution. The said appraisers being first duly sworn by Pryor Bryan, the sheriff of said county, to make a true appraisement of said described lots, make the following appraisement and valuation of said lots, to wit: Lot No. five (5) in block No. six hundred and seventeen (617), at two hundred dollars (200); lot eleven (11) in block No. six hundred and seventeen (617), at one hundred and fifty dollars ($150); lot No. thirteen (13) in block No. three hundred and eighty (380), at one hundred and seventy-five dollars ($175); lot No. fourteen (14) in block No. three hundred and eighty (380), at two hundred dollars (200); lot No. thirteen (13) in block No. six hundred and seventy-one (671), at one hundred dollars ($100); lot twelve in block No. seven hundred and thirty-three (12 in 733), at one hundred dollars ($100); lot No. eleven (11) in block No. six hundred and twenty-two (622), at seven hundred dollars ($700); lot No. twelve (12) in block No. four hundred and forty-three (443), at three hundred dollars ($300). Galveston, 6th October, A. D. 1846.

A. F. JAMES,
WM. H. SANDUSKY.

Sworn to before me, this 6th October, 1846.

P. BRYAN, Sheriff G. C.

(*Alias Fi. Fa., issued October* 12, 1847.)

The State of Texas, Harris County, ss.

To the sheriff of said county, greeting:—

Whereas, at a district court begun and held in and for the county aforesaid, on the 17th day of June, A. D. 1840, Thomas F. McKinney and Samuel M. Williams, merchants, under the firm of McKinney & Williams, by the judgment of said court recovered against James S. Holman the sum of three thousand two hundred and eighty-six $\frac{25}{100}$ dollars debt, and two hundred and thirty-one $\frac{62}{100}$ dollars damages, as also the further sum of $24\frac{25}{100}$ dollars for his costs in that behalf expended, as of record is manifest. And whereas execution issued thereupon directed to the sheriff of Harris

County, on the 31st day of July, A. D. 1840, and was returned not satisfied. And whereas an alias execution was issued and directed to the sheriff of Galveston County, who returned the same levied upon lot No. 12 in block 443, Galveston, which was sold to McKinney & Williams for $135, who, failing to comply with the terms of sale, no deed was executed, and afterwards a pluries execution issued on the 2d of September, 1846, directed to the sheriff of Galveston County, who returned the same levied on sundry lots which were sold to sundry individuals, amounting to $1,921 53. See ex'n for particulars.

Therefore you are hereby again commanded that of the goods and chattels, lands and tenements of the said James S. Holman, you cause to be made the balance of the debt, damages, interest and costs aforesaid, and have you these sums before said court to be held at the court-house in said county, on the 2d Monday in November next, to render unto the said McKinney & Williams. Herein fail not, under the penalty of the law, and have you then there this writ.

Witness F. R. Lubbock, Clerk of the District Court aforesaid, at office in Houston, and seal of said court, this 12th day of October, 1847.

F. R. LUBBOCK, Clerk,

[L. S.] By JNO. FITZGERALD, Dep. Clerk, D. C., H. C.

Bill of costs, writ and copy petition, $2 00. Docketing, 25 c. Filing papers, 50 c. Entering appearances, 50 c. Entering motion, 75 c. Entering orders, 75 c. Entering judgment, 75 c. Final record, $4 00. Tax costs and copy, 75 c. Execution, $1 00.

Att'y's tax fee, $10 00. County tax, $3 00.	$24 25
Sheriff Moore, ret. ex.,	75
Lubbock al. ex. rec.,	1 50
" plu. "	1 50
" al plu. "	1 50
	$29 50

(*Statement on the back of Execution by Clerk.*)

Ex. 90 to F. T., 1840.

Harris District Court to Fall Term, A. D. 1847.

McKINNEY & WILLIAMS vs. JAMES S. HOLMAN. } Al. Plu. Fi. Fa.

Judgment June 17th, 1840.

Debt,	$3286 25
Damages,	231 67
	$3517 87
Credit by sale Galv. Prop., Oct. 6, '46,	1921 55

Clerk Holman,	$11 25
Att'y and Co. taxes,	13 00
Sheriff Moore,	75
Clerk Lubbock,	4 50

Costs to the use of P. Edmunds, Esq., issued October 12, 1847. F. R. Lubbock, Clerk, by John Fitzgerald, Dep. Clerk, Love & Reily, P. 2.

Return, rec'd Oct. 12, 1847; returned same day, no property found. D. RUSSELL, Sheriff H. Co.

The State of Texas, County of Harris.

I, Francis R. Lubbock, clerk of the District Court in and for the county of Harris, in said State, certify that the foregoing transcript contains a true copy of all the proceedings had in said court, in case No. 361, wherein Thomas F. McKinney and Samuel M. Williams were plaintiffs, and James S. Holman was defendant.

Given under my hand and the seal of said court at office, in the city of Houston, this 20th day of April, A. D. 1850.

[L. S.] F. R. LUBBOCK, Clerk D. C., H. Co.
By CHAUNCEY B. SABIN, Deputy.

Deed Pryor Bryan, Sheriff, to Thos. F. McKinney.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others. } In Equity. No. 57.

The annexed and following deed from Pryor Bryan, sheriff, to Thomas F. McKinney, was read in evidence by the defendants on the hearing of this cause. JAMES LOVE, Clerk.

The State of Texas, county of Galveston.

Know all men by these presents that I, Pryor Bryan, sheriff of the county aforesaid, in the said State, duly elected and commissioned for the said office of sheriff, in and for the county of Galveston, by virtue of an execution to me directed from the office of the District Court of the county of Harris, and State of Texas, bearing date the second day of September, A. D. 1846, and numbered 90, in favor of McKinney and Williams against James S. Holman, for the sum of three thousand two hundred and eighty-six and $\frac{25}{100}$ dollars principal, two hundred and thirty-one and $\frac{62}{100}$ dollars damages, and twenty-four and $\frac{25}{100}$ dollars, costs of suit, the same being plu. fi. fa., did on the 7th day of September, A. D. 1846, at the instance of plaintiffs, levy upon the following described and specified property, situated in the city of Galveston, to wit: The several lots of ground known and described in the public plan and plat of the city of Galveston, as lots numbers five and eleven (5 and 11), in block number six hundred and seventeen (617); lots numbers thirteen and fourteen (13 and 14), in block No. three hundred and eighty (380); lot number

thirteen (13), in block No. six hundred and seventy-one (671); lot No. twelve (12), in block number seven hundred and thirty-three (733); and lot number eleven (11), in block number six hundred and twenty-two (622); and also on the fifteenth day of said month of September, pointed out as above, upon lot number twelve (12), in block number four hundred and forty-three (443), as the property of defendant in said execution, and the same having been duly and legally advertised by advertisements posted up in three of the most public places in the county of Galveston, viz: at the court-house door, at the Tremont House, and at the Verandah, for more than twenty days preceding the day of sale, and on the sixth day of October, it being the first Tuesday in said month, duly qualified appraisers were legally chosen to appraise the property levied upon as aforesaid, and after being duly sworn, and having all the qualifications required by law, appraised the said property as follows, viz: Lot No. 5, in block No. 617, at the sum of two hundred dollars; lot number eleven, in the same block, at one hundred and fifty dollars; lot No. 13, in block No. 380, at one hundred and seventy-five dollars; and lot No. 14, in said last mentioned block, at two hundred dollars; lot No. 13, in block No. 671, at one hundred dollars; lot No. 12, in block No. 733, at one hundred dollars; lot No. 11, in block No. 672, at seven hundred dollars; and lot No. 12, in block No. 443, at three hundred dollars. And I, said sheriff, did on the first Tuesday in October, A. D. 1846, offer and expose said property for sale in front of the court-house door of the county of Galveston, within the hours prescribed by law, by offering each of said lots respectively, for cash, with appraisment, the same being done in an open and public manner as required by law, and four of said lots, to wit, said lot number five (5), in block number six hundred and seventeen (617); lot number twelve (12), in block seven hundred and thirty-three (733); lot number eleven (11), in block six hundred and twenty-two (622), and lot number twelve (12), in block number four hundred and forty-three (443), were struck off and by me adjudged to Thomas F. McKinney, of the county and State aforesaid, he being the highest and last bidder for the same, he having bid the sum of thirteen hundred dollars, by P. Edmunds, agent, duly authorized to act in the premises for said McKinney, said amount of thirteen hundred dollars being the appraised value of said property, which by law the same was required to bring if sold. Now be it known that I, the said Pryor Bryan, sheriff aforesaid, in and for the county of Galveston, and State of Texas, do by these presents in consideration of the premises and the sum of thirteen hundred dollars to him charged, and by me credited upon the said execution, he being one of the plaintiffs in the same, grant, bargain, sell, and release unto the said Thomas F. McKinney, his heirs and assigns, all the right, title, and interest that the aforesaid James S. Holman had at the time that the said execution was levied upon the said property, in and to the aforesaid specified and described lots of ground, situated in said county, together

with all and singular the appurtenances thereunto belonging, to have and to hold the same lots of ground in the county aforesaid, to the said T. F. McKinney, his heirs and assigns forever, as fully and completely as the said Pryor Bryan, sheriff as aforesaid, can convey the same by virtue of the proceedings had in the premises under said execution, and by virtue of my office as sheriff aforesaid.

In testimony whereof I, the said Pryor Bryan, in my said capacity of sheriff, in and for the county of Galveston, have hereunto set my hand and affixed my seal (using a private seal, having no seal of office), in the city of Galveston, this 10th day of October, A. D. 1846.

P. BRYAN, [L. S.]
Sheriff of Galveston County, State of Texas.

State of Texas, County of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, P. Bryan, sheriff of Galveston County, who acknowledged that he signed and executed the foregoing deed for the purposes therein set forth.

Given under my hand and the seal of the County Court aforesaid this 20th day of Oct., 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

Filed Oct. 12, 1846, at 1 P. M. Recorded Oct. 23, 1846, at 10 A. M. Book H, pages 10 and 11.

State of Texas, County of Galveston.

I, William H. Sandusky, deputy clerk of the County Court aforesaid, certify that the within deed was filed in this office 12th Oct., '46, at 1 P. M., and recorded 23d Oct., '46, at 10 A. M., in book H, pages 10 and 11.

Given under my hand and the seal of the County Court aforesaid this 23d day of October, 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

Deed from Thomas F. McKinney to Jos. Osterman.

HARVEY BALDWIN
vs.
GALVESTON CITY COMPANY and others. } In Equity. No. 57.

The annexed and following deed from Thos. F. McKinney to Jos. Osterman, with the certificates thereunto, was read in evidence by the defendant Osterman on the hearing of the above cause. The authority of James P. McKinney to execute said deed, as the attorney of Thomas F. McKinney, and also the payment of the consideration money, as stated in the deed, were admitted at the hearing by the complainant.

JAMES LOVE, Clerk.

State of Texas, County of Galveston.

Know all men by these presents, that I, Thomas F. McKinney, of Galveston County, for the consideration of six hundred dollars to him

paid by Joseph Osterman, of said county, have granted, bargained, sold, and released, and do hereby grant, bargain, sell, and release unto the said Joseph Osterman, his heirs and assigns, forever, the following described property, to wit: Lots number eleven (11), in block number six hundred and twenty-two (622); number five, in block number six hundred and seventeen (5 in 617); and number twelve (12), in block number seven hundred and thirty-three (733), being the same lots conveyed to said McKinney by P. Bryan, of said county of Galveston, which lots are lying and being in the city of Galveston, in the county and State aforesaid, together with all the rights, members, hereditaments, and appurtenances to the same belonging, or in anywise incident or appertaining, to have and to hold all and singular the above-mentioned and described premises, unto the said Joseph Osterman, his heirs and assigns, forever; and I do hereby bind my heirs, administrators, to warrant and forever defend all and singular the aforesaid premises unto the said Joseph Osterman, his heirs, executors, administrators, and assigns, against any person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under me, the said McKinney.

Witness my hand and seal (scrawl for seal), this twenty-sixth day of October, A. D. 1846.

THOS. F. McKINNEY, [L. S.]
By his Attorney JAS. P. McKINNEY.

Witness, JUL. FREDERICK,
P. EDMUNDS.

State of Texas, County of Galveston.

Personally appeared before me, Wm. H. Sandusky, Deputy Clerk of the County Court of Galveston, P. Edmunds, who being sworn, saith that Jas. P. McKinney, attorney for Thos. F. McKinney, signed the foregoing deed in his presence, and acknowledged the same to be his act and deed for the purposes therein set forth, and he subscribed his name as a witness thereto.

In witness whereof I hereunto set my hand and the seal of the county court aforesaid, this 27th Oct., 1846.

[L. S.] WM. H. SANDUSKY,
Dep. Clerk G. C.

State of Texas, County of Galveston,

Recorder's Office, Galveston.

I, Wm. H. Sandusky, Deputy Clerk of the County Court of Galveston, do hereby certify, that the within deed of conveyance was filed in this office for record, 27th Oct., 1846, at 3 P. M., and recorded 5th Nov. '46, at 1 P. M., in Book F., pages 295 and 296.

In witness whereof I hereunto set my hand and the seal of the county court, this 5th day of November, Anno Domini 1846.

[L. S.] WM. H. SANDUSKY,
Dep. Clerk G. C. C.

Deed from J. Osterman to Ant. Officiers.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. and others. } In Equity. No. 57.

The annexed and foregoing deed from Joseph Osterman to Antonio Officier, with the certificates thereon, was read in evidence by the defendant, Antoniette Officiers, at the hearing of this cause. The payment of the consideration money as specified in said deed was admitted by the complainant.

JAMES LOVE, Clerk.

State of Texas, County of Galveston.

Know all men by these presents that I, Joseph Osterman, for and in consideration of the sum of two hundred and fifty dollars, to him in hand paid by Antonio Officier, of the county of Galveston, and State of Texas, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, alien, and convey unto the said Antonio Officiers, his heirs and assigns, all that certain lot or parcel of land lying and being in the county of Galveston, and known and described on the map of the city of Galveston as lot number five (5), in block number six hundred and seventeen (617), in said city of Galveston lying and situate. To have and hold the above described property, with the hereditaments and appurtenances to the same belonging to him, the said Antonio Officier, his heirs and assigns forever; and I, the said Joseph Osterman, for myself, my heirs, executors, and administrators, do covenant with the said Antonio Officiers, his heirs, executors, administrators, and assigns, to warrant and forever defend the property hereby conveyed and hereinbefore described to him, the said Antonio Officier, his heirs and assigns forever, to warrant and forever defend the property hereby conveyed and hereinbefore described to him, the said Antonio Officier, his heirs and assigns forever, free from the claim or claims of all persons claiming or to claim the same or any part thereof, by, through, or under me, my heirs, executors, or administrators.

In witness whereof I, the said Joseph Osterman, hereto subscribe my name and affix my (scrawl) seal, this fifteenth Jan'y, A. D. eighteen hundred and forty-seven.

JOS. OSTERMAN. [L. S.]

Witness, P. EDMUNDS.

State of Texas, County of Galveston.

Before me, Oscar Farish, Clerk of Galveston County Court, this day appeared P. Edmunds, to me known, who being sworn, saith that Joseph Osterman signed and executed the within deed to Antonio Officiers in his presence, and that he subscribed his name as a witness thereto.

Given under my hand and seal of Galveston County Court, January 25th, 1847.

[L. S.] OSCAR FARISH, Clerk.

State of Texas, County of Galveston.

I, Oscar Farish, Clerk of the County Court of Galveston County, hereby certify that the within instrument of writing was filed for record January 25th, 1847, at 8 A. M., and recorded same day at 5 P. M., Book F, pages 340 and 341.

Witness my hand and seal of said Court, January 25th, 1847.

[L. S.] OSCAR FARISH, Clerk.

Deed from Thos. F. McKinney to Mrs. Illies.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. and others. } Equity. No. 57.

The annexed and following transcript of deed from Thomas F. McKinney to Mrs. Illies, with the certificates therein, were read in evidence by the defendants, Illies and wife, on the hearing of this cause. The production of original of said deed was waived. The payment of the consideration money as stated in said deed was admitted by complainant.

JAMES LOVE, Clerk.

State of Texas, County of Galveston.

This indenture, made and entered into this nineteenth day of October, in the year one thousand eight hundred and forty-six, between Thomas F. McKinney, of the first part, and Madame Malvina Cecelie Illies, of the second part, both of the county aforesaid, witnesseth, That the party of the first part, for and in consideration of the sum of three hundred dollars to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents doth grant, bargain and sell to the said party of the second part, and her heirs and assigns, all that certain lot or parcel of land in the city of Galveston and known as lot number (12) twelve, in block number four hundred and forty-three (443), being the same lot conveyed by P. Bryan to said party of the first part, as will fully appear by the records of said county of Galveston, to have and to hold the said lot unto her, the said party of the second part, and her heirs and assigns forever, free from the claims of him, the said McKinney, and his heirs and assigns.

In testimony whereof, the said Thomas F. McKinney, of the first part, hereunto sets his hand and scrawl, seal, this day and year first herein written. THOS. F. McKINNEY. [L. S.]

Witness,
STEPHEN W. TREBENER,
JAMES P. COLLINS,
P. EDMUNDS.

State of Texas, County of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston County, P. Edmunds, who, being sworn, saith that Thos. F. McKinney, whose signature appears to the foregoing instrument of writing, acknowledged in his presence that he executed the same for the purposes therein set forth, and that he, said Edmunds, subscribed his name as a witness thereto.

In witness whereof I hereunto set my hand and the seal of the County Court *Court* aforesaid, this 20th day of October, A. D. 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

Filed 20th Oct., 1846, at 3 P. M. Recorded 29th Oct., 1846, at 12 M.

The State of Texas, County of Galveston.

I, Oscar Farish, clerk of the County Court of Galveston County, hereby certify that the above and foregoing is a true copy from the records of my office, Record Book F., page 290, being a deed from Thos. F. McKinney to M. C. Illies, the certificate of probate thereof, and the time of filing and registering the same.

In witness whereof, I, Oscar Farish, clerk of said County Court, hereto subscribe my name and affix the seal of said court, this 11th day of May, A. D. 1859.

[L. S.] OSCAR FARISH, Clerk.

Deed from Pryor Bryan, Sheriff, to Christian Dieckman.

HARVEY BALDWIN
vs.
GALVESTON CITY CO. and others. } Equity. No. 57.

The annexed and following deed, from Pryor Bryan, sheriff of Galveston County, to Christian Dieckman, was read in evidence by the defendant, Dieckman, at the hearing of this cause.

JAMES LOVE, Clerk.

The State of Texas, County of Galveston.

Know all men by these presents that I, Pryor Bryon, sheriff of the county aforesaid in the said State, duly elected and commissioned for said office of sheriff, in and for said county of Galveston, by virtue of an execution to me directed from the office of the clerk of the District Court of the County of Harris and State of Texas, bearing date the second day of September, A. D. 1846, and number 90, in favor of McKinney and Williams against James S. Holman for the sum of three thousand two hundred and eighty-six and $\frac{25}{100}$ dollars principal, two hundred and thirty-one and $\frac{62}{100}$ dollars damages, and twenty-four and $\frac{35}{100}$ dollars for his costs of suit, the same being a plu. fi. fa., did on the seventh day of September, A. D. 1846,

at the instance of plaintiffs levy upon the following described and specified property, situated in the city and county of Galveston, to wit: The several lots of ground known and designated in the public plan or plot of the city of Galveston as lots number five and eleven (5 and 11) in block number six hundred and seventeen (617), and lots number thirteen and fourteen (13 and 14) in block number three hundred and eighty (380), lot number thirteen in block number six hundred and seventy-one (13 in 671), lot number twelve (12) in block number seven hundred and thirty-three (733), and lot number eleven (11) in block number six hundred and twenty-two (622), and also on the fifteenth day of said month of September, pointed out as above upon lot number twelve (12) in block number four hundred and forty-three (443), as the property of James S. Holman, defendant in said execution, and the same having been duly and legally advertised by advertisements posted up in three of the most public places in the county of Galveston, viz., at the court-house door, at the Tremont house, and at the Verandah, for more than twenty days preceding the day of sale, and on the sixth day of October, it being the first Tuesday of said month, duly qualified appraisers were duly chosen to appraise the property levied upon as aforesaid, and after being duly sworn, and having all the qualifications required by law, appraised the said property as follows, to wit: Lot number five in block number six hundred and seventeen, at the sum of two hundred dollars; lot number eleven in the same block, at one hundred and fifty dollars; lot number thirteen in block number three hundred and eighty, at one hundred and seventy-five dollars; lot number fourteen in the last mentioned block, at two hundred dollars; lot number thirteen in block number six hundred and seventy-one, at one hundred dollars; lot number twelve in block number seven hundred and thirty-three, at one hundred dollars; lot number eleven in block number six hundred and twenty-two, at seven hundred dollars; and lot twelve in block number four hundred and forty-three, at three hundred dollars. And I, the said sheriff, did on the first Tuesday in October, in the year of our Lord one thousand eight hundred and forty-six offer and expose said property for sale in front of the court-house door of the county of Galveston, within the hours prescribed by law, and offering each of said lots respectively for cash with appraisement, the same being done in an open and public manner as required by law; and one of the aforesaid lots, to wit, lot number eleven (11) in block number six hundred and seventeen (617) was struck off and adjudged to Christian Dieckman, of the county and State aforesaid, he being the highest and best bidder for the same, having bid the sum of two hundred and five dollars, being more than the appraised value, which by law said property was required to bring. Now be it known that I, the said Pryor Bryan, sheriff aforesaid, in and for the county of Galveston and State of Texas, do by these presents in consideration of the premises and of the sum of two hundred and five dollars paid in cash by said purchaser, do grant,

bargain, sell, and release unto the said Christian Dieckman, his heirs and assigns, all the right, title, and interest that the aforesaid James S. Holman had at the time said execution was levied upon said property in and to the aforesaid specified and described lot of ground, situated in said county, together with all and singular the appurtenances thereunto belonging, to have and to hold the said lot of ground in the county aforesaid to the said Christian Dieckman, his heirs and assigns forever, as fully and completely as I, the said P. Bryan, sheriff as aforesaid, can convey the same by virtue of the proceedings had in the premises, under said execution, and by virtue of my office as sheriff aforesaid.

In testimony whereof I, the said P. Bryan in my said capacity as sheriff in and for the county of Galveston, have hereunto set my hand and affixed my seal (using a private seal, having no seal of office) in the city of Galveston, this seventh day of October, A. D. 1846. P. BRYAN, [L. S.]

Sheriff of Galveston County.

State of Texas, county of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, Pryor Bryan, sheriff of Galveston County, and State aforesaid, whose signature appears to the within and foregoing deed or instrument of writing, acknowledged that he signed and executed the same for the purposes therein set forth.

Given under my hand and the seal of the County Court aforesaid, this 8th day of October, 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

State of Texas, county of Galveston.

I, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, hereby certify that the within deed of conveyance was filed in this office on the 8th October, 1846, at 1 P. M., in Book H, pages 6 and 7.

In witness whereof I hereunto set my hand and affix the seal of the County Court aforesaid, this 14th day of Oct., 1846.

[L. S.] WM. H. SANDUSKY, Dep. Cl'k G. C. C.

(*Certif. of G. Borden, jr., Agent Galveston City Co.*)

HARVEY BALDWIN vs. GALV. CITY CO. and others. } In Equity, No. 57.

The annexed and following instrument, signed G. Borden, jr., agent of Galveston City Co., was read in evidence by defendants on the hearing of the above cause, with the certificates thereon. The complainant objected to the same as evidence because it was not a conveyance or any evidence of a conveyance, and could confer no rights whatever. JAMES LOVE, Clerk.

Office Galveston City Co., Galveston, 1st October, 1846.

I hereby certify that deeds were executed by the directors of the Galveston City Company to James S. Holman, bearing date fifth June, one thousand eight hundred and forty, for the following lots in the city of Galveston, to wit:—

In deed numbered 113, lots numbered five and eleven (5 and 11), in block number six hundred and seventeen (617); lot No. twelve (12), in block No. four hundred and forty-three (443); lot No. eleven (11), in block No. six hundred and twenty-two (622); lots Nos. thirteen and fourten (13 and 14), in block No. three hundred and eighty (380), and lot No. twelve (12), in block No. seven hundred and thirty-three (733). And in deed numbered 114, lot No. twelve (12), in block No. six hundred and eighty-one (681); lot No. thirteen (13), in block number six hundred and eighty-one (681); lot number thirteen (13), in block No. six hundred and seventy-one (671), and lot number thirteen (13), in block No. four hundred and ninety-six (496). And I further certify that said company has no claim whatever to said lots, the amount of the purchase money for the same having been fully paid to said company.

In witness whereof I hereunto set my hand and scrawl for seal the day and date first above written.

G. BORDEN, Jr., [L. S.]
Agent for Galveston City Co.

Attest—
J. A. SWETT,
P. EDMUNDS.

State of Texas, county of Galveston.

This day personally appeared before me, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, P. Edmunds, who being sworn, saith, that G. Borden, jr., whose name appears to the foregoing instrument of writing, as agent of the Galveston City Company, who acknowledged in his presence that he signed and executed the same for the purposes therein set forth and contained, and that he subscribed his name as a witness thereto.

Given under my hand and the seal of the County Court aforesaid, at Galveston, this 6th day of October, A. D. 1846.

[L. S.] WM. H. SANDUSKY,
Dep. Cl'k G. C. C.

State of Texas, county of Galveston.

Recorder's office, Galveston. I, Wm. H. Sandusky, deputy clerk of the County Court of Galveston, hereby certify that the within and foregoing instrument of writing was filed in this office for record 7th Oct., '46, at 11 A. M., and recorded 9th Oct., '46, at 12 M., in book H, page 3.

In witness whereof I hereunto set my hand and the seal of the County Court aforesaid this 9th day of October, A. D. 1846.

[L. S.] WM. H. SANDUSKY,
Dep. Cl'k G. C. C.

The State of Texas, county of Galveston.

Before me, Oscar Farish, clerk of the County Court of Galveston County, this day appeared P. Edmunds, to me known, who being sworn says, that Gail Borden, Jr., acknowledged to him the instrument of writing on the first page hereof written as his, said Borden's, act and deed as the agent of the Galveston City Company, and for the consideration and purposes therein stated, and that he at said Borden's request subscribed his name as a witness thereto.

Given under my hand and seal of said County Court this 4th day of June, A. D. 1857.

[L. S.] OSCAR FARISH, Cl'k.

The State of Texas, county of Galveston.

The certificate on the first page hereof written was filed for record in my office June 4th, 1857, at 4 P. M., and with the certificate of probate thereof by Wm. H. Sandusky, deputy clerk, and my certificate of probate above written, was recorded June 5th, 1857, at 10 A. M., book N, pages 129 and 130.

In witness whereof I, Oscar Farish, clerk of the County Court of Galveston County, hereto subscribe my name and affix the seal of said court this 5th day of June, A. D. 1857.

OSCAR FARISH, Cl'k.

(*Answer of McKinney to 13th Interrogatory in Complainant's Bill.*)

Answer to 13th interrogatory read in evidence at the hearing by the defendants McKinney and the administrators of Williams.

JAMES LOVE, Clerk.

I prefer that the record should answer as to levies, dates, &c.; my memory does not. The judgment on which the sale was made did not belong to McKinney & Williams. The note belonged to Mrs. Toby, of New Orleans. I handed it to Love & Reily, lawyers at Houston, for collection, in the name and for account of Mrs. Toby, and took their receipt to her. They got judgment in the name of McKinney & Williams, but without our knowledge or consent. I knew nothing of it until afterwards. Pizarro Edmunds came to me and said he knew of property belonging to Holman out of which the debt or part of it could be made. Being Mrs. Toby's friend, and the debt a bad one, I told him he should have half of what he could make on it. He controlled the execution; the levy was directed by him. I had no personal agency in the matter.

(*Extract from Bill read by Defendant Ant. Officiers.*)

And your orator further shows, that said lot No. 5 in block 517 was deeded by said Thomas F. McKinney to Joseph Osterman, by deed dated Oct. 26, A. D. 1846, and was recorded Oct. 27, 1846; that the said lot was deeded by said Joseph Osterman to Antonio Officiers, late of the city of Galveston, deceased, by deed dated on

the 15th day of January and recorded on the 25th day of January, A. D. 1847, that subsequently the said Antonio Officiers departed this life at the city of Galveston aforesaid. That afterwards, in a partition of the estate of said Antonio Officiers, deceased, by a decree of the Probate Court of the county of Galveston, the said lot No. 5 in block number 617 fell to said Antoniette, infant daughter of said Antonio Officiers, deceased, in whom or in whose guardian the possession of the said lot now remains, with claim of title thereto.

Parts of Bill and Answers read by Osterman, Illies, and Officiers.

(See statement of proceedings for reference.)

Admissions on Hearing.

The complainant, Baldwin, admitted that he was never a citizen of the Republic or State of Texas.

Complainant further admitted that the defendant, Osterman, paid McKinney $600 consideration for the lots mentioned in McKinney's deed to him, at the date of said deed, and admitted that James P. McKinney was the duly authorized attorney of Thomas F. McKinney to make said deed, and that Officiers paid in cash to Osterman the amount of the consideration money specified in said deed to Officiers at the date thereof.

The payment of the consideration money by Illies, as specified in the deed to Illies, were also admitted by complainant.

Evidence of F. Brandis and Theodore Nutch.

The defendant, Dieckman, introduced as witnesses in his behalf F. Brandis and Theodore Nutch, who proved that said Dieckman enclosed lot No. 11, in block 617, in the month of October, 1846, with a fence, and has ever since held the actual possession of said lot, and occupied and claimed it as his property; has claimed it under sheriff's sale. The enclosure around it has continued ever since.

The said Nutch further said he, witness, was at the sheriff's sale in controversy. Did not get there until after sale commenced; left whilst it was going on. Did not see Dieckman there. Did not hear any notice read, or anything about notice.

Evidence read by Defendant Dieckman.

Defendant Dieckman also read the answer of Pryor Bryan to the 3d cross-interrogatory contained in his deposition, and his receipt to said Dieckman attached to said deposition.

Evidence of Dan. Marston, jun.

Defendant Illies introduced Dan. Marston, who proved the possession of lot No. 12, in block 443, by J. C. Shaw, the lessee of the Tremont Hotel, as a part of the Tremont garden, in which block it is situated. Shaw rented from defendant Illies. Witness knows he

furnished Illies with vegetables for the rent. The lot was enclosed as part of the Tremont garden when Shaw leased the Tremont House, in fall of 1847. Shaw continued to hold possession of the lot under Illies until after this suit was brought.

Evidence of James P. Collins.

He also introduced as a witness James P. Collins, who testified that he was bookkeeper for J. H. Seymour, who was the lessee of the Tremont Hotel prior to Mr. Shaw, and knows that as early as January, 1847, the lot was enclosed and embraced as part of the Tremont garden, and that Seymour rented the same from the defendant, Mr. Illies, and paid him rent therefor; Seymour held it until his death, in the summer of 1847, a short time before Shaw took the Tremont House. From as early as Jan'y, 1847, until after this suit was brought, it continued under said enclosure, and witness knew no other owner of it than Illies. Witness has resided in Galveston since 1842. Lots in Galveston have advanced greatly beyond their value in 1846. Being asked the value of lot No. 12, in 1846, said he recollected that in 1845 Mr. Trebener bought a lot in same block of same value for $300; it is now worth over $2000.

Evidence of Geo. Schieder.

George Schieder, a witness on behalf of the defendant Officiers, testified that in the latter part of 1846, or in the 1st month of 1847, Antonio Officiers was in possession of lot number 5, in block No. 617, in the city of Galveston. It was under enclosure, and was part of the public lumber yard of said Officiers, in which he kept or sold lumber. He held and occupied said lot in the same manner to the time of his death, which was some time in the year 1848, and it has ever since been in the possession and occupation of his widow, and all of the time has been under fence.

Exception of Complainant.

(Contained in statement of evidence.)

On the proof being offered on the part of the defendants, respectively, going to show three years' possession under title or color of title, the evidence was objected to by complainant on the ground that the defendants had not, by their respective pleadings, set up such defence in a manner to entitle them to give such evidence. The objection was overruled by the court, to which decision complainant excepted.

The United States of America, Eastern District of Texas.

I, James Love, clerk of the District Court of the United States of America for the Eastern District of Texas, exercising the jurisdiction and powers of a Circuit Court of the same, for the said district, at Galveston, certify that the foregoing two hundred and forty-eight

pages contain a true and perfect transcript of the record, and all the proceedings had in the case of Harvey Baldwin against the Galveston City Company and others, numbered 57, on the chancery docket of said court.

In testimony whereof I hereunto subscribe my name and affix the [SEAL.] seal of said court, at the city of Galveston, this first day of September, A. D. eighteen hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

JAMES LOVE, Clerk.

Filed Dec. 10th, 1859.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 11.

JOSEPH OSTERMAN, JOHN H. ILLIES, and MALVINA, his wife, *et al.*, Appellants. *vs.* HARVEY BALDWIN.	Appeal from the District Court of the United States for the Eastern District of Texas.

BRIEF FOR APPELLANTS.

The subject-matter in controversy, in this case, is certain lots in the city of Galveston, Texas, all claimed by the appellee, and claimed by, and in possession of, the appellants herein named, severally and respectively, as follows:

Joseph Osterman, lot 11, in block 622.
Christian Deickman, lot 11, in block 617.
Antoinette Officiers, lot 5, in block 617.
Malvina Illies, wife of John H. Illies, lot 12, in block 443.

The appellee (plaintiff below) sets up and claims title to the lots in controversy, under, and by virtue of, four certificates of purchase from the "Galveston City Company," and written transfers of same, as follows:

1. One certificate of purchase issued to Harvey Baldwin (the appellee) 1st af January, 1839, for lots 5 and 11, in block 617, and lot 12, in block 433; and transfer of same to Gail Borden, 4th June, 1840.

2. One issued to Mosely Baker, 5th May, 1840, for lot 11, in block 622; and transfer of same to James S. Holman, 20th May, 1840.

3. Two issued to A. C. and J. K. Allen, 5th May, 1840 —one for lots 13 and 14, in block 380, and transferred to Gail Borden, 4th June, 1840; and one for lot 12, in block 733, and transferred to Gail Borden, 4th June, 1840.

4. Transfers of all four of said certificates from Gail Borden to James S. Holman, dated 3d June, 1840, (but alleged to have been made on the 4th of June.)

5. Deed from James S. Holman to Harvey Baldwin, (appellee,) for all of said lots, dated 6th January, 1845, and filed for registration 12th October, 1846. (Printed record, pages 6 to 12, and 77 to 81.)

The appellants claim title to the several lots held by them, respectively, by virtue of a sheriff's sale, under execution of *fi. fa.* against James S. Holman, made first Tuesday in October, 1846, and conveyed by Prior Bryan, sheriff, by deeds of 7th and 10th October, 1846. (Record, pp. 115, 121.)

It is alleged by the appellee that Holman held said certificates of purchase so transferred to him, as aforesaid, as a mere naked trustee for Baldwin, (the appellee,) the assignments having been made to him (Holman) without consideration, and for the use of the appellee. It is, also, alleged that at the time of the sheriff's sale, under which the appellants claim, public notice was given to the bystanders and bidders of the appellee's equitable title, as *cestui que trust*, as aforesaid.

Whether any conveyance, by deed, of said several lots was made to Holman by the Galveston City Company, prior to the levy and sale by the sheriff, is a question which the testimony leaves in some doubt. But admitting that no such conveyance was made, and that Holman held the certificates as the mere naked trustee of Baldwin, and that notice of Baldwin's equity was given at the time of the sheriff's sale, as alleged in the bill, still we say that the appellants are protected by virtue of having each been more than three years in adverse possession of the premises claimed by him or her, under color of title, after

appellee's cause of action accrued, and before the commencement of this suit, under the 15th section of the limitation act of the late Republic of Texas, passed Feb. 5, 1841. (Oldham and White's Digest, 300.)

It was admitted on the trial below that the Galveston City Company was a duly incorporated body, authorized to hold real estate, and that at the time the certificates for the lots in controversy were issued by said company, the title to said lots was vested in said company by a regular chain of title from and under the sovereignty of the soil of Texas. (Record, p. 101.)

And this title was continued down to Holman by a "consecutive chain of transfer," consisting of the certificates issued by said Galveston City Company, and the written transfers thereof, hereinbefore mentioned. Holman's title was transferred to the appellants (or their grantors) by the sheriff's deed.

We therefore insist that the appellants had severally been in possession of the lots claimed by them, respectively, more than three years, "under color of title," within the meaning of said 15th section of the act of Feb. 5, 1841, at the time this suit was commenced, and that, therefore, the bar is complete.

Horton *vs.* Crawford, 10 Tex., 387; Christy *vs.* Alford, 14 How., 300; Mason *vs.* McLaughlin, 16 Tex., 28, 29; Blackwell *vs.* Patton, 23 Tex., 670; Ryan *vs.* Jackson, 11 Tex., 403; Wheeler *vs.* Moody, 9 Tex., 377; Smith *vs.* Power, 23 Tex., 33; Pearson *vs.* Burdett, Austin, T., Oct., 1861; Browning *vs.* Estes, 3 Tex., 471.

We shall further insist, on behalf of the appellants, that the appellee being, as is shown by the record, an alien to the government of the Republic of Texas at the time of acquiring his pretended title to the premises in controversy, was, by the constitution of said Republic, wholly prohibited and precluded from holding lands in said republic, except by title emanating directly from the government; and so his pretended title to the premises in controversy

was utterly null and void, because acquired in direct contravention and violation of the said constitution, and of the laws of the said Republic of Texas, the same being then an independent government and sovereignty. (Const. of Texas, 17th March, 1836; Paschall's Digest, 104.)

Holliman *vs.* Peebles, 1 Tex., 710; Yates *vs.* James, 10 Tex., 168; Hardy *vs.* De Leon, 5 Tex., 240; White *vs.* Sabareigo, 23 Tex., 246.

GREEN ADAMS,
J. J. COOMBS,
Attorneys for Appellants.

In the Supreme Court of the United States.

OSTERMAN'S EX'RS AND OTHERS, Appellants.

vs.

HARVEY BALDWIN, Administrator.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS, AT GALVESTON.

The appellee, Baldwin, the complainant in the court below, obtained its decree for certain lots in the city of Galveston, Texas, to reverse which this appeal is prosecuted. As the questions in the case arise out of the Alienage of Baldwin, the nature of the Trust in his favor, and the Statute of Limitations of Texas, the statement of the case will particularly present those points. The title of the Galveston City Company (a duly incorporated company authorized to hold real estate) by regular chain of title from and under the sovereignty of the soil to the lots in controversy at the time of the issuance of the certificates, set forth by complainant, was admitted; P. 101. The Company not being prepared to issue deeds, issued certificates of purchase of its lots; the issuance and assignment to lots involved in this case being as follows: Certificate for lots 5 and 11, in block

617; and for lot 12 in block 443, issued Jan. 1, 1839, to Baldwin, the complainant. The bill alleges that—

"For the sake of convenience in the care and management of said "lots, your orator assigned the said certificate to Gail Borden, Jr., in "trust for your orator's own benefit, but without any other considera- "tion therefor; and which assignment, made with the assent of said "Borden, is on the back of said certificate, and is in the words and "figures following, that is to say: 'For value received, I hereby trans- "'fer all my right, title and interest in the within certificate to Gail "'Borden, and request title to issue to him without lien. Done June "'4th, 1840. Harvey Baldwin. (L. S.)' P. 6.

Certificate for lot 11 in block 622, was issued May 5, 1840, to Mosely Baker, and assigned absolutely by said Baker to James S Holman, who was the mere naked trustee of Baldwin:

"That afterwards, to wit, on the 4th day of June, 1840, the said "James S. Holman, at the request of your orator, but without any "consideration, transferred and assigned the said certificate to Gail "Borden, Jr., as the trustee of your orator; and which assignment is "endorsed on the said certificate in the words and figures following, "that is to say: 'For value received, I transfer all my right and title "'to the within certificate and the lot therein mentioned, to Gail "'Borden, and request a deed to issue to him without lien as aforesaid. "'Dated June 4, 1840. James S. Holman.'"

There were certificates of other lots, but they are not now in controversy.

The nature of the trust in Borden is thus further set forth in the bill:

"And further, your orator states that he had possession of all and "singular the said certificates, and delivered them to said Gail Borden, "Jr., in trust and special confidence that the said Gail Borden, "knowing and understanding as he did the equities of your orator, "would protect the said equity and interest of your orator, and that he "would, when the said company should be prepared to make convey- "ances, receive a deed or deeds of the said several lots and premises "for the benefit of your orator, either in the name of himself or in the "name of your orator. And your orator further shows that after the "assignment and transfer as aforesaid to the said Gail Borden, he, "the said Gail Borden, mentioned and suggested to your orator, that "as he, the said Borden, would probably be the person to execute the "deeds on the part and behalf of the Galveston City Company, and that "it would not appear well or look consistent for the said agent to be "executing deeds to himself, it would be well to have some other per- "son substituted as the trustee of your orator, in the place of him,

"the said Borden; that the said James S. Holman, being present at "the said conversation, the said Borden mentioned to your orator, in "the presence of said Holman, that the certificate could be placed in "the name of the said Holman, and that he, the said Holman, could "be substituted in the place of the said Borden, and that your orator "and the said Holman, then and there, on the said 4th day of June, "1840, assented to said arrangement; that in pursuance thereof, on "the said 4th day of June, 1840, assignments were endorsed on all "said certificates by said Borden to said Holman, without considera- "tion, and signed by said Borden." P. 10.

The form of these assignments was as follows:

"For value received, I hereby transfer all my right, title and inter- "est to the within mentioned lots, to James S. Holman, his heirs and "assigns, and authorize the Galveston City Company to make any "title to him or them.

"Witness my hand this 3d day of June, 1840. G. Borden, Jr.

"H. Baldwin,

"E. J. Redout." P. 78.

The bill alleges that these certificates remained in the office of the Galveston City Company; that he cannot ascertain with certainty whether any conveyance was ever made by said company to said Holman; but believes none was made. That on the 6th January, 1845, Holman reconveyed said lots to complainants. (not, however, in a shape to be admitted to record in Texas. See ruling of the Judge, P. 91,) and on the 4th June, 1845, complainant conveyed said lots to W. R. Baker in trust for him That the lots were sold on the 1st Tuesday in Oct, 1846, under execution against said Holman, an insolvent judgment debtor; the said Gail Borden, agent of said City Company, having given a certificate that a deed, No. 113, was issued by said City Company to said Holman for said lots on the 5th of June, 1840. Notice of complainant's right was given at the execution sale, and is charged on the defendants.

The defendants allege that complainant was an alien to the Republic of Texas, and that the title and rights claimed by him were in violation and fraud of her Con-

stitution and laws, and were null and void That the Galveston City Company did make a deed of said lots to said Holman, and they claimed to have purchased in good faith, supposing title to be in Holman, without notice of claim by Baldwin, and insist on the validity of their title. Defendant, Deickman bought and received for lot 11, in block 617, title at the Sheriff's sale, and alleged and proved that his understanding of the English language was so imperfect that he would not have understood a notice of Baldwin's claim; P 42, Hitchcock's testimony, 104. Lot 5, in 617, was deeded by the Sheriff to McKinney, by McKinney to Osterman, and by Osterman to Officiers.

Osterman of lot 11, in 622, and Illies of lot 12, in 443, were both subsequent purchasers from McKinney, and their payment of the purchase money, specified in their deeds by all said parties, was admitted; P. 126.

Actual adverse possession for more than three years before suit brought was proved; P. 126, 127; and the parties claimed the benefit of the 15th Sec. of the Act of Limitations of Texas, as a bar to complainant's suit.

The following points are submitted on behalf of the respective appellants in this cause:

I. The complainant, Baldwin, at the time he made the purchase of these certificates, and had the transfers thereof made to Holman, was an alien to the Republic of Texas, (see Admission, P. 126,) and prohibited by her Constitution from holding lands therein. Constitution of Texas, "General Provisions," Sec. 10.

II. The Trust in his behalf in these lots in the hands of Borden and then of Holman, is the Trust which the law *implies* or *creates*, from the fact that he, Baldwin, paid the money and had the assignments made without

any consideration whatever by the assignees. He alleges *his* motives and designs; *his* trust and confidence in the parties, and speaks constantly of them as naked trustees, &c., but not one word of promise or agreement, written or oral, on the part of Holman, or of Borden, the assignor of Holman, can be found in the bill. The complainant will be taken to have put his case in the strongest light, and cannot go beyond his own averments.

III. It being illegal for the complainant to hold lands in Texas at the date of these assignments, the law did not imply, raise or create any Trust whatever in favor of Baldwin, or of the Government of Texas; but Holman took and held the property free and clear of any trust or right whatever for or on the part of Baldwin or the Government. Hubbard vs. Goodwin, 3 Leigh, 492; Leggett vs. Dubois, 5 Page, 114; Taylor vs. Benham, 5 How. U. S., 270; Phillips vs. Crammond, 2 Wash. C. C. R., 447.

IV. The right of Holman in these lots, whether legal, by deed of the Galveston City Company, or equitable by the assignments, was subject to execution and Sheriff's sale under the laws of Texas. Sayles' Texas Practice, S. 661; Dougherty vs. Cox, 13 T., 209.

V. Holman being an insolvent debtor, (see the Bill, P. 14,) his conveyance to Baldwin on consideration not valuable in law, was in fraud of creditors, null and void, (Chitty on Contracts, 28; Parsons on Contracts, 431, 432,) and the sale under execution conveyed the superior title. McKee v. Gilchrist, 3 Watts, 230; Englebert v. Blanjot, Wharton 240, 245; Jones v. Crawford, 1 McMullan 373; Owen v. Dixon 17 Conn, 493, 498;

Banks v. Thomas, Meigs 28, 33; 1 American Leading Cases 45, 50.

VI. The law not having previously raised or recognized any Trust in behalf of Baldwin, nor of the Government as the sovereign, by escheat or other paramount right, it is perfectly clear that no trust or right of any kind in his favor was created by the effect of annexation. The policy of the law never having claimed out of the transaction any trust for the Government of Texas, none passed from the Government to him on his becoming able to hold lands in Texas. Hubbard v. Goodwin, 3 Leigh, 492; Leggett v. Dubois, 5 Paige, 114.

VII. The testimony is conclusive of a Deed made by the Galveston City Company to Holman for the lots in controversy.

1st. Because that was the express design of the entire transaction. The assignments to Borden were "in trust and special confidence that the said G. B. *knowing and unders anding* as he did the equities of your orator, would when the company should be prepared to make conveyances receive a deed for the benefit of your orator." Page 10.

2d. The sole reason given for the assignment to Holman was that he, Borden, being agent of the City Company and executing its deeds, "it would not appear well or look consistent for him, the said agent, to be executing deeds to himself;" therefore he suggested Holman for the purpose of receiving the deed. Page 10.

3d. The situation of these certificates from 1840 to the bringing of this suit imports with all the verity which this incorporated company could impart to its

records, that a deed was issued to Holman. The present intelligent and honorable agent of that company, a witness for complainant, thus clearly explains this matter:

"Whenever the holder of a certificate wished a deed, he produced "his certificate to the company and delivered up the same, and the "company issued a deed to him. The certificate was then filed away "in the records of the company. Books were kept showing the "issuance of deeds upon the certificates, by memorandum entered "against the number of the lot. All the certificates in this case were "filed away in the records of the company, in the same place and "manner, with the certificates upon which deeds had been issued. "The bo ks and records of the company bear the same evidence of a "deed to Holman on these certificates, that they do of the issuance of "any deed whatever. If the records of the company are true, a deed "issued to Holman. The memorandum No. 113, in the envelope, "indicates that that was the number of the deed issued on the certifi-"cates. No other deed No. 113 was ever issued." P. 102, 103.

4th. Borden, when agent of the Galveston City Company, Oct 1, 1846, gave his certificate that deeds No. 113 and 114 were issued by that company to Holman, bearing date June 5, 1840, the former including all the lots in controversy in this suit. P. 14, 15. 123, 124.

In his deposition, given in this cause Nov. 7th, 1857, he still affirms his "belief" that deed No. 113 was executed, "for it was his practice to make out deeds for all lots where certificates were filed." P. 84. It was admitted in the cause that deed No. 114 was duly issued delivered and recorded. P. 101. There can be no reasonable hypothesis to account for the non-issuance of the other deed, nor does any one pretend to do so.

5th. Baldwin in his deed to Baker, made June 5, 1845, conveying these lots, recites that they were on or about the 5th day of June, 1845, conveyed by the Galveston City Company to Holman. P. 94.

6th. The only reasonable explanation of the deed by Holman to Baldwin, Jan. 6, 1845, (P. 91,) conveying

these lots, is their previous conveyance to him by the Galveston City Company.

7th. The contemporaneous and reiterated testimony of every party connected with the transaction, that the deed to Holman did issue; (see statement in the Bill, page 12) the presumption arising from the situation of these certificates, retired, sunk, *functus officio*, as records of the Galveston City Company, superseded by deed No. 113 for more than ten years, all concur in establishing that this deed did issue.

8th. There is nothing whatever to contradict this except the statement in the Bill that the complainant had lately been informed by Holman that no deed had been made to him, and therefore, on information and belief, he makes the allegation. Holman's evidence, however, is simply that he had no recollection of the execution of the deed. P. 89. The testimony of Edmunds, a man once reputable, but long before the trial of this cause of besotted memory, should not be permitted to make a false impression in the case. The absurdity of his statement that it "was deemed an important point" by the holders of the execution that *no deed* had issued to Holman, in the face of their procuring and recording a certificate to the contrary, is transparent. Besides, Borden's evidence shows that the filing and entries of the certificates were made "within a day or two of the assignments." P. 83. And Baldwin's understanding in June, '45, as well as Borden's, Oct. 1, '46, was that the deed issued June 5, 1840.

9th. It is clear that Baldwin and Borden in speaking of the deed by the City Company to Holman as in Trust for Baldwin, mean a secret implied trust, resulting from the transaction; not an express trust on the face of the deed. Just as the complainant alleges each assignment of a certificate to Borden and then to Holman as "in Trust" for

him—that they were "naked trustees," &c.—though on their face absolute. In his deed to Baker he makes the matter clear, "Whereas the following described lots of land, situated in the city of Galveston, were on or about the 5th day of June, A. D. 1840, conveyed by the Galveston City Company to James S. Holman, in trust for me, Harvey Baldwin, *and Holman having no interest therein except as trustee.*" P. 94. The hypothesis of complainant, that if a deed was made to Holman it probably contained on its face an express trust in favor of Baldwin, is simply sham and subterfuge. All the circumstances show that it was the express and careful design of the parties that the interest of Baldwin should remain secret, and guarded against the inhibition in the Constitution of Texas. Hence not until after the Resolution of the Congress of the United States for annexing Texas, approved March 1, 1845, did any trust in his favor in Texas lands see the light.

VIII. Assuming the deed to be proved from the City Company to Holman, then each of the defendants had "a regular chain of transfer from and under the sovereignty of the soil" down to himself, under which he proved an adverse possession for more than three years before suit brought, which is a bar to the right of complainant.

Sec. 15, of the Act of Limitations of Texas, provides—

"Every suit to be instituted to recover real estate as against him, "her or them in possession under title or color of title, shall be insti- "tuted within three years next after the cause of action shall have "accrued, and not afterwards. * * By the term *title* as used in "this section, is meant a regular chain of transfer from or under the "sovereignty of the soil; and color of title is constituted by a consec- "utive chain of such transfer down to him, her or them in possession, "without being regular; as if one or more of the memorials or muni- "ments be not registered or not duly registered, or be only in writing, "or such like defect as may not extend to or include the want of "intrinsic fairness and honesty; or when the party in possession "shall hold the same by a certificate of headright, land warrant or "land script, with a chain of transfer down to him, her or them in "possession; and provided, this section shall not bar the right of the "government." Paschal's Dig., Art. 4622.

What is "a regular chain of transfer from or under the sovereignty of the soil," within the purview of this act? A valid, paramount title is not requisite, limitation being for the protection of the defective title; 24 How., 223. Nor is the want of notice of the true title, or *good faith*, necessary; 24 How, 223. The defendant may make his location on the senior grant on grounds which are false—Whitehead's heirs v. Foley, Austin, 1866; or may claim under an administrator's deed, in which he committed a fraud—Pearson v. Burdett, Austin T., Oct. 1861; Paschal's Dig, note 1031; the terms "intrinsic fairness and honesty," in defining "color of title," relating "only to the means of proving the right of property in the land, so as to make the title equitably equal to a regular chain;" *ib.* Pearson v. Burdett. The Supreme Court of Texas say with respect to "color of title," "the statute having defined the meaning of the terms employed, we are not at liberty in construing this section to resort to other sources for their definition and meaning." 21 T., 109. In Smith v. Power, 23 T., 33, the Supreme Court of Texas say:

"To constitute such title or color of title, there must be a chain of "'transfer from or under the sovereignty of the soil.' This neces- "sarily pre-supposes a grant from the government as the basis of such "transfer. And the grant must be effectual to convey to the grantee "whatever right or title the government *had in the land at the time of* "*making the grant.* It need not necessarily carry with it the paramount "title; but it must be title as against the government, valid in itself "when tested by itself, and not tried by the title of others. It must "have intrinsic validity as between the parties to it, though it may be "relatively void as respects the rights of third persons."

In 21 T., 110, the Court "say it must be title apparently valid, but liable to be avoided and annulled by some matter extrinsic of the grant." The language of the Court with respect to the grants from the Government, in those cases on which the question arose, has its precise analogy when the question arises on any deed in the consecutive chain. It must be "*valid in itself, when tested by itself, and not tried*

by the title of others. It must have intrinsic validity as between the parties to it, though it may be relatively void as respects the rights of third persons." Its invalidity must arise from matter "extrinsic."

In Kentucky, possession for seven years under "a connected chain of title in law or equity, deducible of record from the commonwealth," bars suit. In Skyles' heirs v. King's heirs, 2 A. K. M., 387, the Court say:

> The true construction of these words, "Does and must mean such "title, when tested by *its own face*, and not tried by the *title of others*. "If the defendant's title should be a connected title in law or equity, "supposing *no other to exist on the ground*, then if he proves seven "years possession, holding under it, the statute shall aid him, although "the plaintiff may be able to show *by the production of his own title*, "or that of others, that the title did not, in law or fact, pass to the "defendant."

The "consecutive transfer of title" is an independent question—to be tested by itself—by its own face—to be effective as relative to the parties to it—operating as a *prima facie* transfer down to the party in possession. No extrinsic facts, or opposing title can be considered:—nor is the *bona* or *mala* fides connected with any transfer involved. In this case, the title was admitted to be in the Galveston City Company from the sovereignty of the soil. The conclusive weight of evidence that the Company made a deed to Holman, has been shown. That it was not recorded is rendered unnecessary by the explanatory example in the statute. Nor is the loss of that deed of any consequence. To make an administrator's deed a link in the chain of transfer under this act, the order of the Probate Court must be shown. But if its records have been destroyed, their existence may be presumed by the jury. Sapp v. Newsom, Austin, March, 1864; Paschal's Dig., note 1031. The judgment and execution against Holman, and Sheriff's sale and deed form a valid link in the chain, in order to sustain possession under the limitation law. Intrinsically, and between the parties, it was good—conveying whatever

right Holman possessed. If ineffective, *as title*, it proceeded from extrinsic causes—from an opposing title on the ground—which cannot come into view in construing the statute. The chain of transfer was complete to each of the defendants in possession.

Title is a "regular chain of *transfer*"; color of title is the same, except that one or more of the muniments be not registered, or not duly registered, "or *be only in writing*, or such like defect as may not extend to or include the want of intrinsic fairness or honesty." "*Only in writing*" evidently means, that if the transfer is *equitable*, and not *legal*—by "*writing*," and not by *deed*—it fulfils the requirement of the statute. The Supreme Court of Texas say that the terms "intrinsic fairness and honesty," relate to the means of proving the right of property in the land so as to make the title *equitably equal to a regular chain*." Pearson v. Burdett, Austin T. 1861; Paschal's Dig. Note 1031.

This is the evident meaning of the court in the case in 24th How. 223, in which they reject the construction of the statute requiring good faith, or want of notice of the better title, and say that it refers to "*the muniments of the title and defects therein*."

The certificates of the Galveston City Company, duly transferred to Holman, as stated by complainant's bill, and proved by him, were *complete and perfect equitable titles*. Borden's answer to 3d cross-interrogatory, 85; Cole's testimony 193. The action of ejectment, or trespass to try title, can be maintained in Texas on these certificates. Sayle's Texas Practice, S. 684; 7 T. 210; 8 T. 36; 5 T. 23; 15 T. 564. Paschal's Dig. Note 1149.

And the "*color of title*" required by this act to sustain a possession of three years, was complete without respect to whether a deed was made to Holman or not.

Green Adams
For Appellants

In the Supreme Court of the United States.

No.——.

OSTERMAN AND OTHERS, APPELLANTS,

vs.

HEIRS OF HARVEY BALDWIN, APPELLEES.

Appeal from the District Court of the United States for the Eastern District of Texas.

FURTHER POINTS AND AUTHORITIES FOR APPELLANTS.

I. Defendants' Demurrer to the Bill on the ground that it was *multifarious*, should have been sustained.

The bill alleges the purchase by Baldwin of four distinct certificates from different parties, entitling him to seven lots in the city of Galveston. Each certificate was transferred *separately* to Borden, and transferred *separately* by Borden to Holman. The lots were levied upon and sold as the property of Holman. At the sheriff's sale the defendant, Deickman, bought one lot, McKinney bought the others, and all passed before the filing of the bill to third persons, who are made defendants together with McKinney and Williams, the judgment creditors, the Galveston City Company, and Wm. R. Baker, to whom Baldwin had conveyed

the lots in trust for himself. The bill alleges Baker's readiness to convey, but complainant declined receiving his conveyance, and makes him a party in connexion with these defendants, in order, says the bill, that he may be "*required and permitted to convey in accordance with a decree of the Court!*"

The bill also prays a decree to recover the different lots from the defendants in possession of them, and that the Galveston City Company make title, or, in the alternative, that McKinney and Williams, who had no longer any interest in the property, should account for the money they had received for the lots.

1st. The demurrer will be determined upon the face of the bill, as the Court below should have determined it, and not with reference to the subsequent proceedings in the case.

2d. The furthest point to which the Courts have gone in sustaining bills against the objection of multifariousness is where the complainant claims a *common right*, and the defendants claim rights of a similar character "depending on a common interest, centering in the point in issue in the cause. (2 Anst., 477; 6 Johns. C. R., 155; 4 Cowen, 700; Gaines v. Chew, 2 How., 619.

What is the common right to be shown by complainant? Not of course a mere general claim of title by one person; but the title to all the property sued for must be *identical, single, one;* and not a claim to one piece of property by one chain of transfer, to another piece by another chain, and so on. (Lumsden v. Fraser, 7 Sim., 560; 1 Mylne & C., 589; Gaines v. Chew, 2 How., 643.

In this case the rights of complainant were without any *unity*, but entirely different; and the most different defences as to his equity to the various certificates might have been presented.

The rights of defendants are not only several, but distinct, and without any single center of common defence. This was to be judged of from the face of the bill and the nature of complainant's title; and however weak or defenceless the

answer may turn out to be, this can not justify an improper joinder of causes of action or parties in the same suit. All may be interested it is true in maintaining the sheriff's sale; but anterior to that, questions might arise upon complainant's right to each certificate; and the other defendants are subsequent purchasers, and without notice. (Story's Eq. Pl., § 272; 1 Mad., 86; Ditty v. Doig, 2 Ves., 486; Lumsden v. Frazer, 7 Sim., 560; 1 Mylne & C., 589.

McKinney and Williams are also made parties for an account against them. This, beyond question, rendered the bill multifarious. (Gaines v. Chew, 2 How., 644.

The reasons given in appellees' brief for making them parties have a refreshing simplicity. "As the bill sought to have the sale under their execution set aside, it was their privilege to be heard in its defence." Very considerate and liberal on the part of Courts whenever the past transactions of any parties are called in question to afford them such an opportunity. McK. and W. had no longer anything to do with the sale. With their liability to account, the other defendants had nothing to do. "Complainant was entitled to a discovery from McKinney;" not as a joint defendant with the other defendants, or in any degree to affect their rights.

Declining to receive a re-conveyance from Baker, but making him a defendant, at the cost of the other defendants, in order that the Court might *permit him to re-convey*, (see p. 46 of the brief,) is a novel source of equity jurisdiction.

II. Full confidence is felt in the soundness of the argument sustaining the defence of the appellants in this case under the 15th section of the Act of Limitations of Texas.

If the Galveston City Company made a deed to Holman, then the appenllats had a "regular chain of transfer" to each of them from the sovereignty of the soil, with the single exception from its regularity that the deed to Holman was not recorded, which is expressly declared by the statute not to affect the deed.

The suggestion that there was never any *delivery* of the deed is no more than a quibble. That this Court will adopt the belief that a deed was made by the City Company to Holman, which was the original object of all the parties, and has been the belief of every party connected with these transactions—of Baldwin, who solemnly recites it in his deed to Baker, (94,)—of Holman, whose deed to Baldwin of the lots, (90,) instead of re-transferring the certificates, could only have been made on that hypothesis—of Borden, who solemnly declares it in his certificate given to Swett, (14,)—of the plaintiffs in execution, and the defendants in this case, led to that opinion from the general concurrence in the fact, with no circumstance to the contrary—of Cole, the present agent of the City Company, who says: "If the records of the Company are true a deed issued to Holman"—against all which there is positively nothing, except the fact that Holman does not recollect the deed—we can see no reasonable ground to doubt. (See the averment in the bill, as to this deed, page 12, paragraph 3.) Stronger evidence by the defendants is, in the nature of things, impossible. The fact is of a character they can elucidate it no further. The non-production of the deed was readily in the complainant's power, and its non-existence was deemed, perhaps, the point on which his recovery depended.

The publication of the decisions of the Supreme Court of Texas since our former brief confirms the construction we then gave the Act of Limitations. Pearson v. Burditt, 26 Tex., 157, shows that combination and fraud between an administrator and the purchaser at his sale can not impeach possession for three years under the administrator's deed. Wallace v. Wilcox, 27 Tex., 60, shows that a previous conveyance by the party holding title to land does not prevent a subsequent conveyance by the same party from being a regular chain of title from the sovereignty of the soil to sustain possession of three years.

"A regular chain of transfer" relates to the *deeds*, the *muniments*, the *paper evidences* of right. If, on their face,

they constitute a title, the actual nature of that title, arising from extrinsic facts, from the existence of a superior or better title, either in the first link by a previous grant from the Government, or in any subsequent link by a previous better conveyance, is totally immaterial. A deed from any person whatever, duly recorded, under which possession is held and taxes paid five years, defeats a recovery. (16th sec. Act of Lim.) The sole support required by this section is a *deed*—it may be from A., B. or C., without pretence or shadow of right, and it may have been executed for the sole object of setting up the statute; but the law does not look behind it, nor in any manner consider the utter absence of right conveyed, or the motives which prompted its execution. If possession be held three years under a chain of deeds from the sovereignty of the soil, by the 15th section there is the same indifference as to the character of the actual title at any point of the chain. "Intrinsic fairness and honesty" is not a question where a regular chain of transfer is shown. They apply to *color of title* where the transfers are not regular. But the meaning is, not that the consecutive chain of transfer, or any link of it, must be fair and honest in relation to the adverse, better title, but simply that if one or more of the links, instead of being a regular deed—for instance, from A. or B.—is such a transfer of the right of A. or B., whatever that right is, as amounts fairly and honestly to a conveyance of it, then it constitutes color of title. In short, "title" is *legal*—"color of title" is *equitable*.

If there was a deed to Holman, the chain of title in the appellants was regular with the immaterial exception that it was not recorded. If there was no deed to Holman, the enquiry then is, whether the link from the Galveston City Company to Holman amounted "fairly and honestly" to a deed. The question is not whether Holman's title was fair and honest, as against Baldwin, but as against the City Company. If he had what Courts recognize as an equitable transfer from the City Company, it satisfies the

statute equally with a deed. That the certificates, duly assigned to Holman, were, in the fullest sense, equitable transfers, entitling the holder to a deed, is the allegation of the bill, and is too plain to require argument. The 16th section requires a single "deed;" and a bond for title is not sufficient; but the 15th section is express and clear in putting a complete equitable right upon the same footing as a deed; and there is no decision or dictum to the contrary in the Texas decisions.

When it is argued that Holman had already conveyed to Baldwin, that nothing passed by the sheriff's deed to McKinney, and therefore it was a nullity—all this may be readily admitted so far as the question of validity or superiority of title is concerned. That was precisely the argument to the Supreme Court of Texas in the cases cited in the 26th and 27th Texas. But the invalidity or nullity which results from a superior title is disregarded. The law only requires the possessor for three years to be able to trace back by a single route a direct line of transfer, legal or equitable, from himself to the Government, and looks to no divergences from that line for the prior or better course of title. Any party finding the chain to Holman, legal or equitable, and taking a conveyance from Holman, either from himself personally, or by a valid judgment, execution and sheriff's sale, making a good conveyance as between Holman and the purchaser, acquired the chain of transfer prescribed by the 15th section, although it may have been true that Holman had previously conveyed, or that his title was in reality, by facts extrinsic to the title itself, a mere trust title.

If the Court should believe that the deed to Holman was *on its face* a trust for Baldwin, it is admitted that it would not support limitation. But this is a false pretence, a mere sham. Holman gives the key to the object intended by the deed, "to place the lots in the hands of a *citizen* to watch over and protect the same, for the payment of taxes and otherwise." (90.) Being an alien, and forbidden to hold

lands, the trust was, and very cautiously intended to be, a secret one. Baldwin recites that the deed from the City Company to Holman was in trust for him. And so the bill alleges that the assignments to Borden and to Holman were all in trust for Baldwin. They mean to aver the fact, but not that the fact appeared by the deed or assignments. And no more was it intended, nor was it true, that the trust was declared in one case than the other. It was not until after the first levy and sale by McK. and W. of part of the property, September, 1844, (see page 110,) that Baldwin found it necessary to protect himself against what he then considered its apparent ownership by Holman, and obtained a deed from Holman—annexation to the United States being then a certainty.

III. The point as to the alienage of Baldwin and the illegality of the trust is fully before the Court.

GREEN ADAMS,
W. P. BALLINGER,
For Appellants.

News Steam Print.

Supreme Court

OF THE

UNITED STATES.

EXECUTORS OF JOSEPH OSTERMAN,
Deceased, and others,
APPELLANTS,

vs.

EXECUTORS OF HARVEY BALDWIN,
Deceased,
APPELLEES.

APPEAL

FROM THE

U. S. District Court for the Eastern District of Texas

POINTS AND ARGUMENT OF APPELLEES

Lawrence Sherwood

with WILLIAM H. GODDARD,

Counsel for Appellee.

Green A. Adams

with WILLIAM P. BALLINGER,

Counsel for Appellants

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Supreme Court

OF THE UNITED STATES.

No. 156.

EXECUTORS OF JOSEPH OSTERMAN, *Deceased, and others*, APPELLANTS,

vs.

EXECUTORS OF HARVEY BALDWIN, *Deceased*, APPELLEES.

Appeal from the U. S. District Court for the Eastern District of Texas.

STATEMENT.

Harvey Baldwin, a citizen of New York, purchased three lots in the city of Galveston, then in the Republic of Texas, from the Galveston City Company, a duly incorporated body owning the site of the city by a regular chain of title from the Republic, and as the Company was not then prepared to execute deeds, he received the following certificate of purchase, to wit:—

"*Certificate of Purchase in Galveston City.*"

"I, Levi Jones, agent for the Galveston City Company,
"do hereby certify that Harvey Baldwin having be-
"come the purchaser of three lots in said city, viz.:
"lots number five and eleven (5 and 11), in block
"six hundred and seventeen (617), and lot number
"twelve (12), in block number four hundred and
"forty-three (443), for the sum of twenty-five hun-

"dred dollars and cents, and having on his "part complied with the terms of sale as prescribed "by the Board of Directors, is entitled to receive a "conveyance for said lots under the orders of the "Board (with a lien upon the said lots for the pay- "ment of A. C. Allen's notes), so soon as the Com- "pany are prepared to execute deeds in proper "form."

"Witness my hand this 1st day of January, A. D., 1839.

"LEVI JONES,
Agent for Galveston City Co."

The lien alluded to in this certificate was subsequently relinquished as is shown by the following indorsement thereon, viz. :—

"This is to certify, that the lien as expressed in the "twelfth line of the within certificate, is this day "taken off and charged to the account of A. C. and "J. K. Allen, agreeably to the order releasing the "lien on one-half of the lots purchased, for which "stock is pledged."

"GAIL BORDEN, JR.,
"*Agent for Galveston City Co.*"

"GALVESTON, 5th May, 1840."

The certificate also bears the following indorsements: "Deed, No. 113." "H. Baldwin's Certificate Galveston City Lots."

On the 5th of May, 1840, three certificates, substantially similar to Baldwin's, and numbered consecutively 364, 365 and 366, were issued by the company, viz.: 364 to Mosely Baker, for lot 11, in block 622; and 365 and 366 to A. C. and J. K. Allen, the former for lots 13 and 14, in block 380, and the latter for lot 12, in block 733.

On the 20th of May, certificate 364 was assigned by

Baker to Jas. S. Holman. The consideration for this assignment moved from Baldwin, who had purchased the lot from Baker, and the assignment was made to Holman with the understanding and agreement that he was to hold the lot and take a conveyance of it from the company, as trustee for Baldwin. Baldwin subsequently purchased from the Allens the lots designated in certificates 365 and 366; and on June 4th, 1840, all four of the certificates were assigned to Gail Borden (the same as Gail Borden, Jr.), viz.: the first certificate by Baldwin, certificate 364 by Holman, and certificates 365 and 366 by the assignee and agent of the Allens. These assignments were made without any consideration moving from Borden, and for the express and agreed purpose of his holding the lots, and taking a conveyance of them from the company, as trustee for Baldwin; but after the certificates had been assigned to Borden, and on either the same day or the next, it occurred to him that, as he was the agent of the company, and would have to join in executing the deed, it would be better that he should not accept the agency and trust for Baldwin; and he therefore suggested, Baldwin and Holman both being present, that the latter should be substituted in his place. This was assented to by Baldwin and Holman, and the certificates were accordingly assigned to the latter by Borden, without any consideration moving from Holman, and on the express agreement that he was to hold the lots, and take a conveyance of them from the company, merely as Baldwin's trustee. The certificates were then folded up by Borden, and placed in an envelope, on which he indorsed the followiug memorandum, viz.:

"No. 113.
"JAMES S. HOLMAN.
"Lots No. 5 and 11, in block 617

"Lots No. 11, in block 622
13 and 14 380
12 733
In trust."

The envelope, with the certificates inclosed, was retained by Borden, and remained in the office of the company. The letters and figures, "No. 113," indicated the number of the deed to be issued for these lots. And there was also a deed, to be numbered 114, to be issued to Holman for other lots purchased and held by him in his own right. At this date, the purchase money had been paid in full, and there was no longer a lien on the lots in favor of the company. Deed 114 was issued to Holman, and recorded in Galveston county. Deed 113, if ever issued, was not recorded.

On January 6th, 1845, Holman conveyed to Baldwin, by deed of release, a large amount of real estate in Texas, including the lots above mentioned. This deed was witnessed by H. H. Allen, and was acknowledged by Holman before the judge of the United States for the district of Maryland. It was afterwards proved up by Allen before the chief justice of Harris county, Texas, filed for record in Galveston county, October 12th, and recorded October 17th, 1846. On June 4th, 1845, Baldwin, by deed duly executed and acknowledged, and recorded in Galveston county the same day, conveyed the lots in trust to Wm. R. Baker. This deed recites that the lots had been conveyed by the city company, on or about June 5th, 1840, to Holman, in trust for Baldwin.

On September 7th, 1846, the lots were levied on by the sheriff of Galveston county, under a *pluries fi. fa.* issued upon a judgment recovered June 17th, 1840, in the District Court of Harris county, by McKinney & Williams against Holman. McKinney was notified by Borden of Baldwin's ownership of the lots, and that Holman had never had any interest in them, except as

trustee for Baldwin. Pizarro Edmunds, who controlled the execution under an agreement with the plaintiffs by which he was to have one-half of what he could make out of it, examined the books of the City Company, and found that they "showed that no deed had then been issued." Deeming this an important matter, he and his attorney, Swett, re-examined the books, "and there was nothing to show on them that a deed had been issued." "The title by certificates at the time appeared to be in the name of Holman." Edmunds and Swett then procured from Borden, who was not aware of their purpose, the following certificate, viz.:

OFFICE GALVESTON CITY CO.,
GALVESTON, 1*st October*, 1846.

"I hereby certify that deeds were executed by the Directors of the Galveston City Company to James S. Holman, bearing date fifth June, one thousand eight hundred and forty, for the following lots in the city of Galveston, to wit:—

"In deed numbered 113, lots numbered (here the certificate described the lots in controversy); and in deed numbered 114 (here the certificate described four other lots). And I further certify that said company has no claim whatever to said lots, the amount of the purchase money for the same having been fully paid to said company.

"In witness whereof, I hereunto set my hand and scrawl for seal, the day and date first above written."

"G. BORDEN, JR. [L. S.]
"*Agent for Galveston City Co.*"

After procuring this certificate, Edmunds "told Swett that they had caught a smart man (meaning Borden) in his own trap." The certificate was attested by Ed-

munds and Swett, proved up by the former, and recorded in Galveston county, October 9th, 1846.

On the sale day, October 6th, 1846, and previously to the sale, Edmunds was notified by Yates, Baldwin's agent and attorney, of Baldwin's claim to the lots. A written notification from Baker, Baldwin's trustee, of the exact state of the title to the lots, directed to the sheriff, was received by him on October 1st, and in accordance with its instructions, was read by him, on opening the sale, to the persons assembled.

The sale was then proceeded with, and lot 11 in block 617 was struck off to Dieckman, a German having but slight acquaintance with the English language; lots 13 and 14 in block 380, to Junaman; and lots 5 in 617, 12 in 733, 12 in 443, and 11 in 622, to McKinney, bidding by his agent, Edmunds. The sheriff's deed to Dieckman was executed October 7th, and recorded in Galveston county, October 8th, 1846. The deed to McKinney was executed October 10th, filed for record October 12th, and recorded October 20th, 1846. McKinney conveyed lot 12 in block 443, to Mrs. Illies by deed dated October 19th, filed for record October 20th, and recorded October 29th, 1846. He conveyed the other lots, struck off to him, to Osterman by deed dated October 26th, filed for record October 27th, and recorded November 5th, 1846. Osterman conveyed lot 12 in block 733, to Lemuel Smith by deed dated October 28th, and recorded October 31st, 1846. He also conveyed lot 5 in block 617, to Officiers by deed dated January 15th, and recorded January 25th, 1847, retaining lot 11 in block 622.

On the 2d day of May, 1850, Baldwin exhibted his bill in the U. S. District Court for the District of Texas, making the Galveston City Company, McKinney, Williams, Dieckman, Osterman, Illies and wife, the heir of Officiers, Smith and Wm. R. Baker, defendants; setting forth, in addition to the facts already stated, that the

complainant had compromised with the grantees of Junaman respecting lots 13 and 14 in block 480; charging, upon information and belief, that no conveyance of the lots had ever, in fact, been executed and delivered by the city company to Holman, or to any one else for him; stating that Baker was ready and willing to reconvey the lots to the complainant, saving the objection of adverse possession held by those claiming under the sheriff's sale; and praying that the city company be directed to execute a conveyance in fee simple to the complainant, that the sale and proceedings under the judgment and execution against Holman be declared null and void, that the defendants be enjoined from setting up title under the same, and be ordered to deliver up possession of the lots held by them respectively, and that Baker be permitted to reconvey the lots to the complainant under the decree of the court.

The answers admit the issuance and assignments of the certificates, but deny knowledge of the trust for Baldwin, and set up the following defenses, viz.: That the lots were conveyed by the city company to Holman, and that the defendants were *bonafide* purchasers for value under Holman, at and through the sheriff's sale, without notice of Baldwin's claim; that Baldwin, at the time of his alleged purchases, was an alien to Texas, and could not acquire title to land there, under the constitution and laws of the Republic; and that complainant's suit is barred by the statute of limitations.

From the decree rendered in accordance with complainant's prayer, Osterman, McKinney, Illies and wife, Dieckman and Antionette Officiers, have brought this appeal, in which the City Company, Wm. R. Baker and the administrators of Williams, present in court by their solicitors, declined to join.

The complainant having compromised with Junaman's grantees, and Smith not having been served with a sub-

poena, and the city company not having appealed, the appeal embraces only the three lots for which a certificate was issued to Baldwin, and the lot for which certificate 364 was issued to Mosely Baker. The other certificates and lots will not, therefore, be specially referred to in the argument.

Points and Authorities.

I. The *legal* title to the lots in controversy is still in the Galveston City Company. It was once vested in the company by admission. It has never been divested.

(1). Not by a parol sale for want of delivery of possessionof the lots to the purchasers, and so far as lot 11 in block 622 is concerned, by reason of the statutes introducing the common law rule as to sales of interests in land. Besides, the pretence of a parol sale is precluded by the pleadings.

(2). Not by the certificates; these did not purport, and were not meant, to be transfers; were not executed by an authorized officer; and were not sealed.

(3). Not by a deed; for none was executed and delivered. All the facts relied on to sustain the inference that a deed was "made out" by the agent, are equally consistent with the contrary inference, and explainable by the intention that it should be issued, though the issuance was inadvertently omitted. The testimony of Edmunds and Holman shows that no deed was issued. At all events, there is no proof whatever of the

execution of the deed by the directors, its acknowledgment and delivery. It was incumbent on the defendants to make this proof, which they have utterly failed to do.

Authorities cited, parol sales:—*Nichols* agt. *Pilgrim*, 20 *Txs. R.*, 426; *Brisco* agt. *Bronaugh*, 1 *Txs. R.*, 331; *Scott & Soloman* agt. *Maynard and wife*, *Dallam's Digest (Txs.)*, 548; *Sackett* agt. *Hooper*, 3 *La. R.*, 104; *Sanchez and wife* agt. *Gonzales*, 11 *Martin (La.)*, 207; *Hartley's Digest (Txs. Statutes) arts.* 127 *and* 167.

Delivery of deed. *Hughes* agt. *Easten*, 4 *J. J. Marshal (Ky.) R.*, 572; *Jackson* agt. *Phipps*, 12 *John. (N. Y.)* 419. Hartley Dig Art. 167. Dikes vs Miller 24 Tex. R. 423.

II. The *equitable* title to the lots is still in Baldwin. It was vested in him by his purchases and payments. The assignments to Borden and Holman, being without consideration, and on express trust for Baldwin, did not pass the equitable title. Baldwin's equitable rights were not affected by his former alienage. Under the constitution of the Republic of Texas, an alien could *take* real estate by purchase, and *hold* it until office found. There was no inquest of office in this case; and by the annexation of Texas, Baldwin's alienage was determined, and his title became indefeasible. The plea is not only too late, but it would never have been available to *the defendants*, at any time; and if available, should have been in abatement, not in bar.

Authorties cited as to express trusts:—*Hubbard* agt. *Goodwin*, 3 *Leigh (Va.)* 519; *Leggett* agt. *Dubois*, 5 *Paige (N. Y.)*, 118; *Miller* agt. *Thatcher*, 9 *Tex. R.*, 482; *Mead* agt. *Randolph*, 8 *id.*, 191; *James* agt. *Fulcrod*, 5 *id.*, 512; *Neill* agt. *Keese*, 5 *id.*, 23.

As to alienage.—*Hartley's Digest (Txs. Statutes) p.* 38, *sec.* 10; *Jones et. al.* agt. *McMasters*, 20 *How.*, *(U. S.)* *R.*, 21; *White* agt. *Sabariego*, 23 *Txs. R.*, 246; *Lee* agt. *Salinas*, 15 *id.*, 495; *Jackson* agt. *Beach*, 1 *John.* ~~*ch.*~~ *(N. Y.)* 399; *Ramires* agt. *Kent et. al.*, 2 *Cal. R.*, 558.

Cases

III. If any title to the lots, or interest in them, ever vested in Holman, it passed from him to Baldwin, not to the purchasers at the sheriff's sale. If it be granted that a deed was issued and delivered to Holman, he took but "a dry, legal title," in trust for Baldwin. Such a title is not subject to levy and sale under execution; and a purchaser, even without notice, takes nothing, especially if the trustee, as in this case, was not in possession, and did not hold under recorded title. But the purchasers in this case had notice; Dieckman and McKinney actual notice; McKinney's vendees constructive notice; Holman's deed to Baldwin, and Baldwin's to Borden, having been duly recorded in time to affect them. Moreover, the former deed was, even as an unrecorded deed, a sufficient conveyance of all of Holman's interest in the lots to Baldwin, and left no interest in Holman subject to levy and sale under execution; the deed *to* Holman having also been unrecorded, and he being a mere trustee for Baldwin. Even if Holman had had, at the time of the sale, any beneficial interest, the purchasers would have taken that subject to Baldwin's equity.

Authorities cited—dry legal title not subject to levy and sale: *Lessees of Smith et al.* agt. *McCann*, 24 *How.* (*U. S.*), 398; *Houston* agt. *Nowland*, 7 *Gill & John.* (*Md.*), 493; *Thomas* agt. *Walker*, 6 *Humph.* (*Tenn.*), 93; *Melton* agt. *Davidson*, 6 *Ired. Eq.* (*N. C.*), 195; *Hart et al.* agt. *Farmers' and Mechanics' Bank*, 33 *Vt.*,

252; *Baker* agt. *Copenbarger et al.*, 15 *Ill.*, 103; *Walker* agt. *Lincoln*, 45 *Me.*, 67.

Purchaser at sheriff's sale takes subject to outstanding equities: *Johnson* agt. *Lee & Crawley*, 1 *Busbee's Eq.* (*N. C.*) *R.*, 45; *Rutherford* agt. *Green*, 2 *Ired. Eq.* (*N. C.*) *R.*, 127; *Whitworth* agt. *Greagain*, 3 *Hare's Ch.* (*Eng.*) *R.*, 416; *Abbott* agt. *Stratton*, 3 *Jones & La Fourche* (*Eng.*) *R.*, 614.

Holman's deed to Baldwin duly recorded: *Hartley's Dig.* (*Texas Statutes*), *arts.* ~~2776, 2777~~, 2789, 2794, *Butler* agt. *Dunagan*, 19 *Texas R.*, 565.

Holman's deed left in him no interest subject to levy and sale: *Haynes* agt. *Jones*, 5 *Metc.* (*Mass.*) *R.*, 292.

IV. The plea of limitation is unavailing to the defendants. They do not show, as required by the statute, a "chain of transfer" from the government down to them.

1. The link from the City Company to Holman is wanting. The certificates were not transfers, and no deed is proved to have been executed and delivered to Holman; and if it were, the very same proof, as well as the other evidence in the case, shows that it was a trust deed on its face, which clearly would not suffice as a link.

2. Admitting a deed to Holman.—No transfers are shown from him to the purchasers at the sheriff's sale. Holman had no interest at the time of the sale, and there could be no transfer of anything from him. The sheriff's deeds were absolutely null and void to all intents and purposes, and could not, any more than a stranger's deed, or a forged deed, or the deed of an unauthorized agent, suffice as links in the chains of transfers. Even if they could have passed an interest, the purchasers would have taken subject to Baldwin's equity, and could not plead possession under such deeds in bar of their

cestui que trust. Furthermore, as the defendants were not *bona fide* purchasers without notice, they cannot plead the three years' bar for "the want of intrinsic fairness and honesty."

Authorities cited: *Marsh* agt. *Weir*, 21 *Texas*, 97; *Castro* agt. *Wurzbach*, 13 *Id.*, 131; *Christy* agt. *Alford*, 17 *How.* (*U. S.*) 601; *Charle* agt. *Saffold*, 13 *Texas R.*, 109; *Davila* agt. *Mumford*, 24 *How.* (*U. S.*) 214; *Hartley's Digest* (*Texas Statutes*), *art.* 2391; *Thompson* agt. *Cragg*, 24 *Texas R.*, *p.* 582.

V. The bill is not multifarious. The complainants' cause of action and right to relief covered the whole ground taken in the bill, included all the lots, and required that all the claimants of them should be made parties. These claimants were alike interested in all the questions raised, and the same defense was available to them all. McKinney was a proper party, as a purchaser entitled to plead want of notice; also that the complainant might have a discovery from him. Williams has not appealed. Clearly the appellants have not been prejudiced by the filing of one bill instead of many. If they were, it would be a question of costs merely.

Authorities: *Larkins* agt. *Biddle*, 21 *Ala. R.*, 252; *Butler* agt. *Spann*, 27 *Miss. R.*, 234; *Wortley* agt. *Johnson*, 8 *Geo. R.*, 236; *Nail* agt. *Mobley*, 9 *Id.*, 278; *Martin* agt. *Martin*, 13 *Miss. R.*, 36; *Lowther* agt. *Coulton*, 2 *Atk.* (*Eng.*), 138; *Story's Eq. Pl.*, *sec.* 187.

VI. Holman's testimony, though not needed to sustain the decree, was properly admitted. He had no interest in the subject matter, object, or any possible result of the suit. The covenant in his deed to Baldwin

would fix no liability upon him, if Baldwin should lose the lots by the machinations of the defendants, as covenants of title do not extend to tortious acts of third parties, nor to the laches of the covenantee, nor to defects arising subsequently to the date of the covenants.

Authorities: *Executors of Grenelife* agt. *W——*, *Dyer*, 42. *a*; *Ellis* agt. *Welch*, 6 *Mass.*, 246; *Phelps* agt. *Sawyer*, 1 *Aikin* (*Vt.*), 150; *Folliard* agt. *Wallace*, 2 *Johns.* (*N. Y.*), 402; *Kelley* agt. *Dutch Church*, 2 *Hill* (*N. Y.*) 111; *Frost* agt. *Earnest*, 4 *Wharton* (*Pa.*), 86.

VII. The frame of the decree is clearly correct so far as the appellants are concerned, and they can raise no objections to it on grounds that affect only the parties that have not appealed.

Argument.

It being admitted that the legal title to the lots in controversy was at one time vested in the City Company, while it is consistent with the complainants' case, but fatal to the defense that it should never have been devested, the onus was upon the defendants to prove that the company had parted with that title. This could have been only in one of three ways, viz.: by parol sales, by the certificates, or by a deed duly executed and delivered. As the answers rely on conveyan-

ces from the company, either to Baldwin and Mosely Baker by certificates, or to Holman by a deed, defendants are estopped from deducing title from the company by parol sales.

But it may be easily shown that there were no such sales of the lots in controversy.

The title to real estate could pass by a parol sale, under the law in force in Texas prior to March 16th, 1840, at which date the acts of January 20th and February 5th, 1840, went into operation; the former introducing the common law, and the latter requiring the transfer of any interest in land to be in writing, sealed and delivered. The sale of the three lots for which a certificate was issued directly to Baldwin, was made before the passage of these acts; the sale of the other lot was made after they took effect, when parol sales of land were no longer valid. But the first sale was not such a one as would pass the legal title, as it did not conform with the requirements of the law as to parol sales. Such sales, in order to pass title, must have been accompanied and perfected by the delivery of possession to the vendee. There is no proof that Baldwin was put in possession of the lots at the time, or that he has ever been in possession of any of them. Yet it was incumbent on the defendants to make this proof, in order to show the legal title to have passed out of the city company by a parol sale to Baldwin.

It is evident that the sale was not intended to be a parol one, as a certificate was issued to the purchaser, promising him a deed.

The certificates did not pass the legal title. They do not even purport to do this. They merely promise a conveyance of the legal title at a future day, with a reservation of a lien. They were not regarded by the company as legal conveyances, but only as entitling the

purchaser, or his assignee, to demand such conveyances when the company should be prepared to execute them. (*Borden's answer to 3d cross-interrogatory, transcript, p. 85, and Cole's testimony, p. 103.*) But even if they purported, and were meant, to pass the legal title, they would still be inoperative for that purpose, because signed, not by the directors, but merely by the agent, who has never been empowered to execute conveyances for the company. (*Borden's answer to 7th interrogatory, p. 84, and Cole's testimony, p. 102.*) The certificate numbered 364, having been issued after March 16th, 1840, and not being sealed, was, for this reason, also, invalid as a conveyance.

The city company was not devested of the legal title by a deed to Holman; for no deed is proved to have been executed and delivered to him.

The execution of such a deed has been claimed as a fair deduction from the following premises, viz.:—

(*a.*) The allegation in the bill that Baldwin intended this deed to be, and five years afterwards supposed it had been, executed by the company

(*b.*) The certificates being on file in the company's office, as if surrendered for a deed.

(*c.*) The entries appearing in the company's books at the time of the hearing, and corresponding with entries made when deeds are issued.

(*d.*) The indorsement, "No. 113," in Borden's handwriting, on the envelop, in connection with Borden's testimony that this was intended to designate the number of a deed.

(*e.*) The non-issuance of any other deed numbered 113, and the issuance of deed 114, which was to have been issued at the same time.

(*f.*) The fact that Holman conveyed the lots to Baldwin, and Baldwin to Baker, by deeds instead of assigning the certificates—the latter deed reciting that the lots

had been conveyed by the city company to Holman in trust for Baldwin.

(*g.*) Borden's certificate in 1846 that the company had executed deeds 113 and 114 to Holman.

These facts are all perfectly consistent with the case made in the bill, viz.: that Baldwin, Borden and Holman agreed and intended that a deed should be executed to Holman; that this was the very object of the transfers of the certificates; but that, notwithstanding, the deed never was, in fact, issued; and this intention, though unfulfilled, explains each and all of the above facts. It shows why the certificates were left in the company's office, viz.: that a deed might be issued for the lots therein designated, and in accordance with the agreement between Baldwin, Holman and Borden. That the filing of certificates preceded the issuance of deeds appears from Borden's answer to the 7th interrogatory, p. 84.

It explains, too, the entries in the books, if made (as for the present will be conceded) at or about the time of the transfers to Holman; for, in that case, they were made, as Borden's testimony shows, to indicate deeds, not then executed, but thereafter to be executed. So, too, the memorandum on the envelop was prospective. Borden's testimony (in reply to the 6th interrogatory, p. 83,) is as follows, viz.: "I did inclose said original certificates in said envelop, and made said memorandum on the outside. I did it within a day or two after the transaction of the assignments before referred to in my testimony. The number on said envelop marked '113' was intended to denote the number of the deed *to be* executed by the Galveston City Company for said lots. The words, 'in trust,' indorsed on the envelop were made to denote that the lots *to be* deeded" &c. And again: "the object and purpose of my writing the words 'in trust,' on said envelop, were to furnish my own

memory with a memorandum of the facts, and also to distinguish these lots from other lots which Holman owned in his own right, and for which he *was to receive* another deed at the same time, which other deed to Holman *was to be* numbered 112 or 114. Another object in writing the words, 'in trust,' upon the envelop was that those who might succeed me in office might understand that these lots were held in trust." And again, in answer to the 8th interrogatory, p. 84, he speaks of "the first record made for deeds *to be executed* in the office of the City Company."

This language shows that the execution of the deed was, in the contemplation of the parties, future to the making of the memorandum and entries. Then, why should the memorandum have been made for the benefit of Borden's successors in office, or even for his own future guidance, if the deed had then been, or then was, or was then immediately to be, made out by himself?

Again, that these entries, and this memorandum were prospective—preliminary to the contemplated execution of a deed, and not necessarily to its immediate execution, is proved by the fact that this same memorandum, "Deed No. 113," was indorsed as early as May 5th, on the certificate issued to Baldwin, and on the certificate to Mosely Baker, at the date of its assignment to Holman, May 20th (trans. p. 79); that is, it was made on Baldwin's certificate at a time when he owned only the three lots therein designated—weeks before his purchase of the other four lots, and therefore weeks before a deed *could* have been issued embracing *them*—a month before the assignment of that certificate to Holman, and therefore a month before a deed *could* have been issued, or intended to be issued, to *him*. If, then, the mere memorandum shows that a deed had been issued at its date, it follows that this "Deed No. 113" was issued on three

several days, weeks apart, and for different parcels of lots, and to two distinct grantees.

This unfulfilled intention (that deed 113 should be issued for the lots belonging to Baldwin) also explains why no other deed numbered 113 was ever issued. Borden had appropriated that number for a deed to Baldwin as early as May 5th, and made a memorandum to that effect on Baldwin's certificate. Then, on May 20th, when certificate 364 was assigned to Holman, as the lot therein designated really belonged to Baldwin, a memorandum was indorsed thereon showing that it was to be included in the same deed, No. 113. And again, on June 4th, Borden made a new memorandum, showing that this deed, when issued, was to include all the lots owned by Baldwin at that date. He soon after made out" deed 114, and naturally proceeded in regular series with subsequent deeds.

It would seem that the deeds to be issued were all numbered in advance, during the time that the company was not prepared to execute deeds; that when a lot was purchased, an entry was made, specifying, among other things, the number of the deed to be issued to the purchaser when the company should be ready to give a deed.

This intention also accounts for the supposition of the parties thereto, after the lapse of five years, that the deed had been executed in pursuance of their design; and, therefore, for the deeds from Holman to Baldwin and Baldwin to Baker, and for the recital in the latter. Baldwin was a non-resident of Texas, and there only on a visit. Holman and Borden had no interest in the lots. It was thus quite natural that Baldwin should take for granted the execution of the deed after his departure from Texas, in accordance with the arrangement that the deed should be executed, and that Borden and Holman,

overlooking the matter for a time, should long afterwards be, and act, under the impression that it had been duly attended to.

Such mistakes are of common occurrence. The mind often confounds design with execution, and that, too, when the lapse of time is scarcely appreciable, and hardly involves an act of memory; as when one, purposing to express a thought clearly conceived, and distinctly defined, in his own mind, utters precisely the contrary, and yet, though immediately corrected, cannot be convinced of the contradiction between his thought and his expression. In all such cases, the clearer the intention, the stronger the impression of a corresponding execution. That Holman did not overlook the deed for the lots belonging to him in his own right is perfectly consistent with the inadvertent omission of the issuance of a deed for lots in which he had no interest, and the execution of the former might easily and naturally, after a time, lead to the supposition that the execution of the latter had also been duly attended to.

This intention accounts, also, for Borden's certificate, in 1846, that two deeds numbered 113 and 114 had been executed to Holman, "bearing date the 5th day of June, 1840." Borden undoubtedly gave this certificate in good faith, having been "caught in a trap," as Edmunds congratulated Swett; but he could not have given it from a recollection of the fact; for how could he, six years afterward, have recollected that deeds 113 and 114 had been executed, and not only the year, but the precise month and very day of their date? He, perhaps, remembered the intention of all parties, that deed 11 should be issued, and the transfers made for that express purpose. He, no doubt, referred to the certificates on file, the memorandum on the envelop and the entries—if these were then in the books. All these showed that deed 113 was to have been issued, and furnished him

with the date of the transaction. It was known, too, that deed 114 had been issued and recorded. Taking it for granted, without questioning the fact, that deed 113 had also been executed, as it was designed to be, he gave a certificate to that effect, acting on the same natural supposition that influenced Holman and Baldwin to act as if such a deed had been executed. They all, after the lapse of years, presumed that what had been intended to be done had been done. This certificate, then, being but the statement of Borden's inference from the other facts already explained, adds nothing to their effect—affords no cumulative or independent evidence of the execution of a deed.

There is another reason why this certificate is no evidence of the execution of a deed—it was obtained by imposition. Borden was trapped into giving it in the form in which it was expressed; for the tenor of the whole certificate, the fact that it includes deed 114, its concluding clause, and Borden's answer to the 11th interrogatory (p. 84), show that what he had in mind in giving it, and what he supposed to be wanted by those procuring it, was, the statement, not that deed 113 had been actually issued or executed, but that the Company had been paid in full, and had no longer any claim on the lots. This was the "trap" in which he was caught. He was inveigled into certifying one thing, under the persuasion that he was certifying another and very different thing.

But that the intention of the parties was never actually fulfilled by the execution of a deed, is shown by Edmunds' testimony (trans. p. 105). He investigated the title to these lots, with a view to having them sold under the execution against Holman, and he testifies that he is "certain that the books of the Galveston City Company did not show that any deed had been executed to Holman for these lots;"—that he himself "examined the

books of the company, and the books showed that no deed had then been issued. Witness states most distinctly that he examined the books at the time of getting Borden's certificate, and there was then nothing to show on the books that a deed had been issued, and he (witness) told Swett, and they went to the office and made another examination together of the books, and there was nothing to show on them that a deed had been issued. In this matter he cannot be mistaken, for it was deemed an important point by witness and Swett, who was his attorney." This testimony is too circumstantial and explicit to admit of doubt, and there is no testimony conflicting with it.

How, then, are to be explained the entries now found in the books, and which, if they had then been there, could not have escaped Edmunds and Swett?—for they were, doubtless, aided by Borden in their examination; and, besides, the very mode of keeping the books, as explained by Cole (p. 102), would have guided them at once to the place where these entries now appear. It is probable that the entries were made by Borden at the time of his giving the certificate to Edmunds, and on the same erroneous supposition that induced him to give the certificate, viz.: that the deed had actually been issued according to intention, but that the usual entries had been inadvertently omitted at the time.

Holman's testimony corroborates that of Edmunds; for he testifies (p. 89) that he has "no recollection, knowledge or belief, of the Galveston City Company ever executing, or delivering, to him a deed of conveyance of these lots." This, it may be said, is negative; but Holman could not well testify more positively respecting the execution, years before, of a deed to property, in which he had no interest, than by disclaiming all knowledge, recollection and belief that the deed was ever executed. No cautious witness would willingly

go further than this; and this is supported by, and supports, the testimony of Edmunds.

It has been conceded by the argument, so far, that Holman, at the time of executing his deed to Baldwin, was, as well as Baldwin and Borden, of the impression that the lots had been conveyed to him, in pursuance of the design that they should be; but this concession is purely gratuitous—there is nothing in the record to require it. The allegation in the bill is, that Baldwin *believed* Holman to be of that impression, because such had been the agreement and design. This was a mere inference of Baldwin's, drawn from the intention of the parties, and illustrates how that intention could give rise to a belief that the deed had been executed. The fact, that Holman conveyed the lots by deed to Baldwin, instead of assigning the certificates, might be explained by the testimony that Holman never had possession of the certificates (Borden's answer to the 6th interrogatory, p. 83), while the deed was executed in Maryland, and included a vast amount of property besides the lots. It is evidently a release to Baldwin of all the property that had been held in trust for him by Holman, and was a valid conveyance of the lots, whether these were held by certificates or by a deed. So that Holman's testimony is not impaired by his former conduct, or any contradictory assertion, express or implied. But even if it were conceded that Holman, in 1845, acted on the assumption that the lots had been deeded to him; still this does not override his testimony, at a later date, that no deed had been executed, to the best of his recollection, knowledge and belief; for it does not appear that in 1845 the question of the execution of the deed was directly presented to his mind, as it was by the interrogatories, which were shaped for that express purpose.

All the facts and circumstances from which the issuance of this deed is sought to be deduced as a legitimate

inference being thus *equally* consistent with its non-issuance, and explainable by the intention of the parties that it should be issued, though such intention was never carried into effect, the defendants have not relieved themselves of the burden of proof. On the contrary, by the testimony of Edmunds and Holman—one called for the complainant, the other for the defendants—the weight of the evidence is clearly thrown against the presumption of the issuance of the deed.

It now becomes important to note that all the facts relied upon by the appellants (the entries, memorandum, &c.), even when taken most favorably to them, tend to this conclusion merely—that the agent, as the company's scrivener, prepared deed 113, that it might be executed by the proper officers of the company. True, Borden's certificate states that deeds 113 and 114 "were executed by the directors of the Galveston City Company to James S. Holman"; but this, as has been shown, being a statement of Borden's inference from the other facts, and not of his recollection, and having also been procured by deception, is not to be regarded as evidence of the fact. Now let it be granted that the preparation of the deed by the agent is a legitimate presumption from the facts apparent in the record—is this presumption to be extended to the subsequent execution and acknowledgment of the deed by the directors? and if Borden's certificate is considered as affording any evidence of the execution of the deed by the directors, what proof does the record furnish of *the delivery of the deed to Holman?* It appears from the testimony of Borden (p. 84) and of Cole (p. 102), that the company's deeds were made out by the agent, but were required, at that time, to be signed by three of the directors and countersigned by the agent; that to save the directors the trouble of coming to the office to sign single deeds, it was the agent's *practice*, when a number of deeds had been made out, and were ready to

be executed, to take them to a central and convenient place in the city (Briggs and Yard's store), where, it seems, they were left to be signed by the directors, severally, as they might be passing; and that, thus, "some deeds had been lost *in transitu* before reaching the grantees." This explains how, in case Borden, as agent, had prepared and countersigned deed 113, and made his entries accordingly (even *ex post facto*), no proof is thence derived of the subsequent execution and acknowledgment of the deed by the directors, *much less of its delivery to Holman*, without which delivery it would be no deed at all. As appellants deraign title under this alleged deed, it was incumbent on them to prove, not only its preparation, execution and acknowledgment, but also its delivery and acceptance. Proof of delivery, there is absolutely none in the record, not a particle. On the contrary, Holman's testimony goes to disprove the delivery of the deed to him, and is corroborated by the fact that the deed was not recorded. If it was executed and delivered to Holman at the same time as deed 114, as claimed by the appellants, why was it not recorded at the same time? In order to save the property from liability for Holman's debt? Why, then, was it placed in his name, as appellants claim that it was? and why was deed 114 recorded? Or, will it be suggested that the deed was withheld from record on account of Baldwin's alienage? This would be to admit that the deed disclosed his interest on its face—was, in fact and in form, a trust deed; an admission obviously fatal to every defense upon which the appellants seek to rely.

The City Company, then, still has the legal title to the lots in controversy, this not having been devested by either a parol sale, or the certificates issued to the purchasers, or a deed duly executed and delivered to Holman.

That the equitable title to the lots became vested in

Baldwin by his several purchases and payments of the purchase money, is evidenced by the certificates and the indorsements thereon, which are admitted in the answers to be correctly set out in the bill; by Borden's certificate that the City Company had been paid in full for the lots; by Cole's testimony that "upon the production of the certificates and assignments in this case by Holman, a deed would have issued to him in fee simple," unless a trust deed had been specially requested; and by the testimony of Borden and Holman that Baldwin bought and paid for the lots, and was the beneficial owner of them. (Transcript, pp. 78, 79, 82, 83, 89, and 103.) This throws upon the defendants the onus of proving the equitable title to have passed out of Baldwin, if they would defeat the relief claimed in the bill. To make this proof, there is nothing produced but the assignments of the certificates to Borden and Holman. But it is clear that these assignments did not convey the equitable title; for both Borden and Holman testify that no consideration moved from them, that the assignments were made to them as mere naked trustees for Baldwin. Baldwin, however, was an alien to the Republic of Texas; and it may be urged (as it was in the court below), that as the assignments were absolute on their face, and did not declare a trust for Baldwin's benefit, his interest would thereafter be but a resulting trust, at most; that equity will not raise such a trust in favor of an alien: and that these assignments, therefore, virtually operating to devest Baldwin of all interest in the lots, preclude his recovery in this suit.

This argument is unsound throughout. In the first place, the assignments from Baldwin to Borden, and Borden to Holman, were wholly inoperative *as transfers*, unless it can be explained what interest the assignors could possibly have parted with by assignments, that passed neither the legal nor the equitable title;—not the

legal title, for the assignees did not have that to convey; nor the equitable title, for no consideration moved from the assignees. In like manner, the assignment of certificate 364 from Mosely Baker to Holman did not pass the legal title, as that was not vested in Baker; nor the equitable title *to Holman*, as it is plain he never purchased the lot, both from his own testimony and Borden's, and from the indorsement on the certificate, at the date of its assignment, of the number of the deed (113) which had already been appropriated for the other lots belonging to Baldwin.

Again; if the assignments had any effect as transfers, it was not to convert Baldwin's interest into a resulting trust. The proof shows an explicit understanding, and express agreement, between Baldwin, Borden and Holman that the last two should, whether as assignees of the certificates, or as grantees in the intended deed from the company, occupy the position of mere naked trustees for Baldwin; that a trust was created, not by legal implication, but by the act of the parties—declared by Baldwin, and accepted by Borden and Holman. This was not a resulting trust, in any view of the case; but, at most, an express trust orally declared.

In *Hubbard* vs. *Goodwin*, 3 *Leigh, (Va.)*, 519, TUCKER, P., says: "That the land was purchased with Phillips' money is admitted; that Brodie always acknowledged that the property was not his, but Phillips', is certain. I should infer that, *ab ovo*, there was an understanding between Brodie and Phillips, that the former was to purchase the land in his own name, and hold it for the latter. *Such an understanding was an express trust though verbal.*" In the present case, the understanding is matter of positive proof, not of mere inference. See, also, the language of Carr, J., to the same purport, p. 508.

In *Leggett* vs. *Dubois*, 5 *Paige, (N.Y.)*, 118, *Chancellor* WALWORTH says: "It is very evident that the trust, what-

ever it was intended to be, was an express trust from the beginning; although the writing, which was the evidence of that trust, was not executed until sometime after wards."

It is part of the law of Texas that express trusts in land may be declared by parol, and do not come within the statute of frauds, as shown by the repeated decisions already cited.

Again: If, by virtue of the assignments, or otherwise, Baldwin's interest became a resulting trust, equity has not been asked to raise such a trust in favor of an alien; for Baldwin was no longer under the disability of alienage when this suit was brought—that disability had ceased, and could not be revived against him.

The constitution of the Republic of Texas provides (§ 10, Hart. Dig., p. 38) that "no alien shall *hold* land in Texas, except by titles emanating directly from the Government of this Republic." This is nothing more than the common law rule, by which an alien could *take* real estate by purchase, and hold it against all the world except the government, and even against the government until office found; and it has been so held by this court in *Jones et. al.* agt. *McMasters*, 20 *Howard's R.*, 21, and by the Supreme Court of Texas, in *White* agt. *Sabariego*, 23 *Txs. R.*, 246, where it is said that an alien's title is merely defeasible.

Baldwin took, by an equitable title, the property in controversy, and did not part with his equitable interest by the voluntary assignments of the certificates, or otherwise. No inquest of office was instituted on behalf of the government, and no proceeding in equity to enforce a trust in its favor. Annexation took place, and Baldwin became, by the constitution of the United States, entitled to all the privileges and immunities of a citizen of Texas. It was then too late for even the government of Texas to take advantage of his former alienage. The act of annexation,

operating as an act of naturalization, had a retroactive effect, making his title, which before was defeasible, thenceforth indefeasible. The case cited from 1 *John. Ch. (N. Y.) R., p.* 399, is directly in point.

Again: The objection of alienage, if valid in itself, would not have been available to *the defendants.* They were not the proper parties to interpose that objection; nor could it properly have been pleaded in this suit, even if the suit had been instituted bfore annexation. (See the case of *Ramires* agt. *Kent*). Even if it had been an available defense, it should have been "pleaded by way of abatement, as in disability of the person," as was decided by the Supreme Court of Texas in *Lee* agt. *Salinas.* But Baldwin's alienage is not pleaded in abatement of the suit. It is pleaded as a bar to his acquiring a valid title to the property; a plea bad in law, and unavailable to the defendants.

Illies and wife do not plead Baldwin's alienage at all, and, of course, cannot avail themselves of that defense.

If, then, the legal title remained in the city company, and the equitable title in Baldwin, down to the commencement of this suit, every defense relied upon by the defendants falls to the ground; as well the defense of *bona fide* purchasers without notice, which assumes that they have the legal title to the lots, as the defense of limitation, which rests on a pretended consecutive chain of transfer from the Republic of Texas down to them, of which chain a transfer to Holman is a necessary link.

If the preceding points have been well taken, Holman never acquired any title whatever to the lots. In no event, could the certificates have vested any interest in

him, as the assignment of the first was not sealed, and the certificates were neither of them issued under seal, or signed by the directors, or delivered to Holman; nor did any consideration move from him to Borden, Baldwin or Mosely Baker. Whatever interest, then, is set up in Holman, must be founded on the alleged deed to him from the city company. Whether such a deed was ever executed and delivered, has already been fully discussed. That if executed and delivered, it was in express terms a trust deed, will hereafter be shown. Let it now, however, be granted for argument's sake, that a deed was executed and delivered, and was absolute on its face; still, as no consideration moved from Holman, and as an express trust in Baldwin's favor was declared by parol (for Borden and Holman both testify that Holman, as well as Borden, was to be Baldwin's trustee), Holman's sole interest was that of a mere naked trustee for Baldwin; and this interest did not pass to the purchasers at the sheriff's sale; even if it did, they took it subject to Baldwin's equity.

That a "dry legal title" is not subject to sale under execution, and that by such a sale no right whatever passes, is well settled by the authorties previously cited. So, too, that when the defendant in execution has some beneficial interest, but there are outstanding equities, the purchaser takes precisely the interest the defendant had, subject to all such equities. And it matters not, as the cases cited show, that the purchaser at the sheriff's sale has no notice of the trust, or the outstanding equities; he purchases at his own peril, and cannot acquire what did not exist to be sold, or an interest greater than the defendant in execution had. *A fortieri*, notice of the trust cannot be necessary to render a sheriff's sale ineffective to pass title in the circumstances of this case, where neither by the registration of a deed, nor by occupation of the lots, had anything been done to raise

a presumption of ownership, or title, in the trustee. To such a case, surely, if to any conceivable case, must the doctrine of *caveat emptor* apply, in its full extent. If a deed was executed and delivered by the City Company to Holman, and this deed expressed on its face (as will hereafter be shown to have been the case, if a deed was issued,) a trust in favor of Baldwin, but was not recorded, it is difficult to conceive how the want of actual notice of the trust to the purchasers at the sheriff's sale would enable them to take an estate of any kind, and especially an estate discharged of the trust; nor does it appear how the condition of the purchasers would be improved, if the trust for Baldwin was declared by parol, instead of being expressed in the unrecorded deed.

But it is unnecessary to dwell upon this view of the case, for the reason that the purchasers at the sheriff's sale, and their vendees were, each and all, affected with notice of Baldwin's equity, and therefore took subject thereto whatever estate, if any, they acquired by their purchases.

Dieckman had *actual* notice from Baldwin, by his attorney, Yates. The notice read by the sheriff, at the time and place of sale, was binding upon all who purchased at that sale, whether they understood the English language or not; just as the records of the registry office are constructive notice to all the world, as well to those who are *not*, as to those who *are*, conversant with the language in which they are kept. It was also binding upon all purchasers, whether they were present and within hearing when it was read, or came up afterwards. It was not necessary that the notice should be read as often as a new-comer joined the auction crowd. Moreover, the presumption is that a purchaser was present when the sale commenced, until the contrary is proved. The contrary is not proved in this case. The testimony of Hitchcock, that at the time of the hearing, more than

twelve years after the sale, he did not recollect having seen Dieckman at the sale, when it commenced, is negative and amounts to nothing.

McKinney, to whom were struck off all the lots in controversy but the one bought by Dieckman, also had actual notice, personally, and through his agent, Edmunds. (Borden's answer to interrogatories 12 and 14, p. 84 and 85; Bryan's answer to interrogatory 5, p. 99; Edmunds' testimony, p. 105; Sherwood's testimony, p. 101; Hitchcock's testimony, p. 103.)

McKinney's vendees had *constructive* notice; for prior to their purchases, Holman's deed to Baldwin, and Baldwid's deed to Baker, had been duly registered in Galveston county. The registration of the former, if not warranted by the Act of February 5th, 1841, in force at the date of its acknowledgment, (*Hartley's Digest, arts.* 2776 and 2777), was clearly warranted by sections 6 and 11 of the Act of May 12th, 1846, in force at the date of its registration. (*Hart. Dig. arts.* 2789 and 2794.) The acknowledgment, had it been taken by the very same officer after the latter Act went into operation, would clearly have been sufficient, under the 11th section, to entitle the deed to registration; and section 6 makes the same acknowledgment, though taken before the passage of that Act, as effectual as if taken after its passage—thus rendering it unnecessary to duplicate the acknowledgment. See the analogous case, *Butler* vs. *Dunagan*, 19 Tex., 565. This is so clear that it is unnecessary to urge that Judge Heath, if not authorized to take acknowledgments of deeds by the Act of February 5th, 1841, was at least a competent witness, and became by his certificate, to all intents and purposes, a subscribing witness to the deed, which was then properly admitted to record, in accordance with the 8th section of the Act of May 12th, 1846, upon the proof of Allen, one of the subscribing witnesses.

The deed from Holman to Baldwin being thus shown to have been duly registered, there can be no question but that Baldwin's deed to Baker was also properly admitted to record; though the registration of the former alone gave full notice of Baldwin's claim to the lots.

The effect of Holman's deed to Baldwin, in devesting the former of all interest in the lots (on the supposition that he ever had any) and vesting the same in Baldwin, has so far been left out of view. This deed was executed January 6th, 1845, previously to the levy of the execution, and before any lien had been acquired under it. Hartley's Digest, arts. 1624, et seq. , [A copy was admitted in evidence by agreement, and proof of the original waived. Trans. p. 95.] If it were granted that this deed was not duly recorded, and was, therefore, to all intents, an unregistered deed, still as the conveyance *to* Holman (if any such was made) was solely for Baldwin's benefit, *and was also unrecorded*, the deed *from* Holman was a sufficient conveyance of his interest in the lots to Baldwin, and there remained in Holman no interest subject to levy and sale under execution. The case of *Haynes* agt. *Jones*, cited from 5 Metcalf, is exactly in point.

It thus appears that if any title to the lots, or any estate in them, ever vested in Holman, it passed from him to Baldwin, not to the purchasers at the sheriff's sale; and further, that even upon the admission, that the purchasers at that sale acquired any estate whatever, it was a mere legal estate subject to Baldwin's equity.

The defense of limitation remains to be considered. The section of the statute relied on by the appellants is, so far as is material to the present case, as follows, viz.:

"Every suit to be instituted to recover real estate, as "against him, her, or them, in possession under "title, or color of title, shall be instituted within "three years next after the cause of action shall "have accrued, and not afterwards. * * * By "the term *title*, as used in this section, is meant a "regular chain of transfer from or under the sov- "ereignty of the soil; and color of title is con- "stituted by a consecutive chain of such transfer "down to him, her or them in possession, with- "out being regular; as if one or more of the "memorials or muniments be not registered, or "not duly registered, or be only in writing, or "such like defect as may not extend to, or include "the want of intrinsic fairness and honesty; or "where the party in possession shall hold the "same by a certificate of headright, land warrant "or land scrip, with a chain ot transfer down to "him, her or them in possession."

Osterman has made no proof of possession, and, therefore, cannot take anything by this plea. But the appellants have, none of them, shown "a consecutive chain of transfer" from the Republic of Texas down to them. There was no transfer from the City Company to Holman, under whom the appellants claim. The certificates could not, as appeared on their face, operate as transfers *from the company;* much less, as transfers *to Holman*, as (discarding other objections) they were not assigned under seal and delivered to him. Nor was there a transfer to Holman by deed; for, as has already been shown, no deed was ever executed and delivered to him; and it will now be shown that, even on the supposition that a deed was executed and delivered to him by the company, it was *on its face a trust deed*, which clearly would not be such a link in the chain of transfer as the statute contemplates.

That this deed, if executed, must have been a trust deed in form, is either proved by, or perfectly consistent with, every part of the evidence on which the appellants rely to prove the issuance of a deed.

(a.) The allegation in the bill is that it was a conveyance in trust which was intended to be, and afterwards supposed to have been issued. (p. 12.)

(b.) The certificates would have been surrendered, and filed in thec ompany's office, if a trust deed were to be issued, precisely as in the case of any other deed.

(c.) The entries in the books are the same as would be made on the issuance of any deed, whether in trust or not; the entry being in no case descriptive of the character of the deed. Besides, Borden "made a memorandum of the trust in pencil on the first record made for deeds to be executed in the office of the company." (p. 84.)

(d.) The endorsement on the envelop, "No. 113—In Trust," plainly indicates that deed 113 was, or was to be, a trust deed; as that could have been the only purpose of making such a memorandum by the agent, whether meant for his own guidance or for that of his successor in office. As part of the *res gestae*, this memomorandum would seem conclusive as to the intention of the parties.

(e.) The issuance of no other deed numbered 113 is accounted for, if a trust deed of that number had already been, or was intended to be issued.

(f.) The conveyances by Holman to Baldwin and Baldwin to Baker, are not only as consistent with a trust deed as with any other, but the latter actually recites that the lots had been conveyed to Holman in trust for Baldwin. (p. 94.)

(g.). Borden's certificate would apply to a trust deed as well as to an absolute one. That he did not certify the charactor of the deed, if he then recollected it, is

explained by the fact that the object of procuring the certificate was carefully concealed from him—he was "caught in a trap." (Borden's answer to 12th interrogatory, p. 84, and Edmunds' testimony, p. 105.) The certificate was made cunningly to embrace deed 114 as well as deed 113, and, as before remarked, the object of the certificate, in Borden's contemplation, was merely to state that the company had been satisfied in full for all the lots alike, and had no further claim upon them. (See, too, Borden's answers to 11th and 12th interrogatories, pp. 84 and 85.)

It thus appears that while every part of the evidence, relied upon to prove the issuance of a deed to Holman, is fully *as* indicative of a trust deed as of an absolute deed—is *as* consistent with the former as with the latter —some portions of that evidence, to wit, the antecedent intentions of the parties, their subsequent impressions and recitals, and the memorandum on the envelop, tend clearly to show that the deed to Holman was to have been, and, if issued, actually was, a trust deed on its face.

The intention that the deed should express the trust is further shown by Borden's answer to the 8th interrogatory, viz.: "If the deed in trust was made out and executed (as I presume it was) I do not recollect and cannot now state the terms or language of the deed in reference to the trust, or whether any trust clause was or was not made in the deed. But I do* recollect that I made a memorandum of the trust in pencil on the first record made for deeds to be executed in the office of the company." Of course, such a memorandum in such a place could have been intended only to indicate what sort of a deed was to be made out and executed.

* "But I do *not* recollect," in the printed transcript, which is a mistake, as will be seen by reference to the manuscript record.

When Baldwin conveyed the property to Baker in trust, the deed expressed the trust on its face;—it is a just inference that the conveyance to Holman of the same property in trust was intended to be likewise a trust deed in form.

Then, why were two deeds to be issued to Holman, at the same time, by the same grantor, one embracing one parcel of lots, the other another parcel situated in the same city, if the two deeds were to be precisely alike in their character? Holman did not take a separate deed for each lot. He took one deed for all the lots belonging to him in his own right, and (according to the appellants) he took another deed for all the lots held by him as trustee for Baldwin. Why was this, if the latter deed was not to express, and did not actually express (if issued), the trust on its face? Borden says, in answer to the 13th interrogatory, (p. 85,) that if deeds 113 and 114 were executed, "they were given separately for the reason that the lots in the memorandum 113 belonged to the complainant, and were held by said Holman in trust for him, and the lots in memorandum 114 were Holman's individual property, as I understood." This reason, to be of any force, would require *the deeds to show* which lots were held by Holman as trustee for Baldwin —*i. e.*, would require the trust to be disclosed on the face of deed 113.

The conclusion is inevitable, though it is sought to be avoided by the suggestion that Baldwin's object in constituting a trustee was to conceal his interest in the lots on account of his alienage; and that, therefore, the deed would not have been likely to express a trust in his favor. This suggestion is purely gratuitous—unwarranted by any thing disclosed in the record; as gratuitous and unwarranted as the charge in the answer of Illies and wife, that the object in creating the trust was to cover up and secrete the property from the complainant's cred-

itors—there being no proof that the complainant ever had any creditors. It is repelled by the testimony of Holman and Borden, which supports the allegation in the bill. It derives no plausibility from the legislative or judicial history of the Republic, which will be searched in vain for a single enactment, or a solitary decision, by which the property of an alien purchaser was forfeited to the government. In no one instance was an inquest of office instituted in behalf of the Republic; nor did the laws provide any mode of proceeding against the property of alien purchasers, as this court had occasion to notice in *Jones et. al.* vs. *McMasters*, previously cited. That the possibility of such a proceeding was too remote to exert any practical influence is shown by the fact, that it was more than a year after Baldwin made his purchase from the company when he appointed Borden and then Holman his trustee. Besides, of what force is this suggestion, when the circumstances all show that Baldwin fully intended that the deed to be issued to Holman should be a trust deed, that Borden and Holman understood this to be the intention, and that Baldwin subsequently acted upon the impression that a trust deed had been issued to Holman? It is to be borne in mind that Baldwin recites this conveyance in trust in his deed to Baker, *executed before the foundation of this suit was laid, and while he was still an alien to the Republic of Texas;* and this deed, thus disclosing his interest in the lots, was immediately, *and before the annexation of Texas*, placed on record in Galveston County, thus conclusively demonstrating that he had no concealment of his interest in view.

But if Baldwin had intended to conceal his interest, that would not have prevented the deed from being issued to Holman in trust, but would only have induced its being withheld from record. Indeed, this is the only plausible reason that can be given why the deed was not

recorded, except that assigned by Baldwin, viz.: that the deed was never executed and delivered to Holman :—either of which reasons is fatal to the defense.

It appears, then, that in order to sustain the plea of limitation in this case, it must be *presumed* that a deed was executed by the directors of the city company, that it was absolute on its face, and that it was duly acknowledged and delivered to Holman—presumptions too violent, considering the state of the proof, to be raised by a court of equity in aid of an unscrupulous scheme to make Baldwin's property pay Holman's debt, and for the protection, not of innocent purchasers, but of purchasers deliberately, and after full notice, making themselves parties to the wrong concocted by McKinney, Edmunds and Swett. Equity will raise no presumptions in favor of such a plea by such parties, but will hold them to the strictest and clearest proof.

But if a transfer from the City Company to Holman be admitted, still there were no transfers from him to the purchasers at the sheriff's sale.

The "chain of transfer" prescribed by the statute is a chain whose first link is a grant, complete or inchoate, from the Government, and whose every subsequent link is, or is capable of being perfected into, a valid transfer of all the right, title and interest derived through the initial grant. The only difference between "title" and "color of title," as defined by the statute (aside from the initial grant, which in the one must be complete and in the other may be inchoate only), is, that "title" is constituted by a chain of transfer whose links are all regular —every deed being formal in its execution, acknowledgment and registration; while "color of title" is constituted by a chain of transfer, some of whose links are irregular—that is to say, informal merely in respect

either of their execution, attestation or registration, but not defective by reason of their nullity, or of the want of intrinsic fairness and honesty.

In *Marsh* vs. *Weir*, cited from 21 *Txs.*, the court say: "The statute having thus defined the meaning of the terms employed, we are not at liberty, in construing this section, to resort to other sources for their definition and meaning. The definition of 'color of title,' in this section, is certainly very different from that which has been given by courts to these terms; that is, "that which in appearance is title, but which in reality is no title.' *That is not the color of title defined in this section of the statute;* and the statute having defined the terms, we must look to the statute for their meaning." And the court go on to decide that a grant from the Government, valid when made, but afterwards declared forfeited because the grantee had abandoned the country, would not, under the statute, constitute color of title. The court distinguish such a "revoked" grant from the case of a second or junior grant, and say: "such a second grant might be held to constitute color of title, under the statute. And such, perhaps, would be the case generally, where the grant or title was not absolutely, but only relatively void; or where it was apparently valid, but liable to be avoided and annulled by some matter extrinsic of the grant. But where it has been adjudged a nullity, and, in effect, recalled and canceled by a competent tribunal, it is as though it had never issued; it is absolutely, and to all intents and purposes, a nullity. Of such a grant, after it has been thus adjudged void, it cannot be said that it constitutes title or color of title from the sovereignty of the soil. It has no longer a legal entity, and cannot form the basis of the limitation prescribed in the 15th section of the statute." The same holds good of any subsequent link in the chain. If such link is a nullity, if it has no legal entity,

if it is intrinsically void, and not merely "liable to be avoided by some matter extrinsic" thereto, it cannot sustain the plea of three years' limitation. In *Castro* vs. *Wurzbach*, cited from 13 *Txs.*, the court say: "It is very clear that those claiming the benefit of this Act must deraign their title by a consecutive chain of transfer from the sovereign power down to him. In so deriving title, no link can be omitted. The statute only dispenses with the registration or proof of some one of them, or that if some link is in writing only, which last we suppose means if a link should be in writing, but not witnessed nor under seal." The necessary implication is, that, to make out a chain of transfer, every link must be such that, if formally executed, it would operate as a valid transfer—be "translative of property." But when there is no leviable interest in the defendant in execution, the sheriff's deed, however formal in its execution, cannot possibly effect a transfer of property. His deed is intrinsically void, and not merely liable to be made void by matter extrinsic. It is no more than any other stranger's deed;—there being no interest in the defendant to be conveyed, the sheriff's deed conveys nothing. Like the deed of one conveying the property of another as agent or attorney, but without any authority, it is "absolutely, and to all intents and purposes, a nullity." To hold otherwise would be to decide that a mere string of deeds constitutes "a chain of transfer;" so that in case one of the deeds was forged, or executed without authority, still the chain of transfer would be complete, within the meaning of the statute.

The opinion of this court in the case cited from 17th *Howard, Chisty* vs. *Alford*, proceeds upon the same construction of this section; that the person setting up this bar "must be in a regular chain of transfer from and under the sovereignty of the soil, or in a consecutive chain of such transfer, *though informal in its instru-*

ments,"—"must be in privity with his predecessors,"—must have equitably in himself all the interest that they had. The court say: "There is nothing in the act to restrict the party sued from relying on the possession of any predecessor *in that title under the sovereignty of the soil, which has come to himself*," &c.

But this point has been definitively settled in the later case of *Thompson* vs. *Cragg*, in which the Supreme Court of Texas say: "Nor can there be color of title, as defined by the statute, where there is a complete *hiatus* in the chain. Color of title differs from title only in externals. The substance of both is the same. Were this not so, if color of title were something intrinsically and substantially less, or weaker than title, then the wisdom of the legislature could not be vindicated, in applying the same period of limitation to a possession supported by the one as is applied to a possession supported by the other." It will hardly be pretended that the purchasers at the sheriff's sale acquired *titles* to the lots in controversy, as Holman had no beneficial, leviable, or transferable interest therein. As conveyances, the sheriff's deeds were "intrinsically and substantially" good for nothing. But if they could not pass *title*, by reason of their intrinsic nullity as conveyances, neither could they serve as *color of title*, according to the decision just cited; and there is "a complete *hiatus*" in the chains of transfer which the appellants seek to make out.

"Instrinsic fairness and honesty" are, by the express terms of the statute, required of him who holds under "color of title"; and on this ground, also, the appellants fail to make good their defense of limitation. They purchased with notice that Holman had no leviable interest—no interest whatever—in the lots, and therefore, cannot protect themselves under the 15th section of the act. In *Charle* vs. *Saffold*, cited from 13th Tx., the

court, it is true, hold that a void deed, coupled with possession, may bar an action; and so, too, possession by one not holding in good faith. But in that case, a different section of the statute, the 17th, was involved; for the jury had found by their verdict that the "defendant and those under whom he claims, have had peaceable and adverse possession of the land in controversy for ten years next preceding the commencement of this suit." Of the several sections of the statute, the 15th alone requires "a regular chain of transfer," or "a consecutive chain of such transfer," accompanied with "intrinsic fairness and honesty"; and, therefore, the Ch. Justice, who delivered the opinion, in repudiating the necessity of good faith to entitle one to the benefit of the plea of limitation, and deciding that such a doctrine has no foundation in the statute, very properly adds, "*at least as to the longer terms of limitation.*" In another place, his language is, "the object of the statute, *in its longer terms*, is not to settle questions in relation to good or bad faith, the right or the wrong of possession; it proceeds on other principles." It is plain that the Ch. Justice had no intention to intimate, by way of *obiter*, that the 15th section dispenses with good faith, while requiring "intrinsic fairness and honesty."

This clause of the statute has already been before this court in the case of *Davila* agt. *Mumford*, cited from 24th Howard, where both plaintiff and defendants claimed under grants from the government, the defendants being in possession under the junior grants. It was claimed that the elder grant being of record, the defendants had constructive notice of it at the time of the grants to them, and hence owing to the want of intrinsic fairness and honesty, within the meaning of the statute, could not avail themselves of the bar of three years. The Court say: "It is admitted that this clause of the statute has not yet received a construction by the Courts of Texas,

and there is certainly some difficulty in ascertaining the precise meaning intended by the legislature from the phraseology used. The better opinion, we think, is, that the want of intrinsic fairness and honesty, in the connection in which the words are found, relates to some infirmity in the muniments of title, or deduction of title, of the defendant, indicating a want of good faith in obtaining it." In the present case, the infirmity is in the deduction of title by the defendants, indicating their want of good faith in obtaining it; for having bought with notice that Holman had no title, and had never had any interest in the property but that of a mere trustee for Baldwin, they clearly do not occupy the position of *bona fide* purchasers.

The Court go on to quote from the section, and again speak of this clause as "clearly referring, as we think again, to the muniments of title, and defects therein."

The conclusion warranted by these authorities is, that the protection of the three years' limitation can be claimed only where there has been a valid grant, complete or inchoate, from the government (though not necessarily such a grant as carries the paramount title), and a chain of such transfers as pass down to the defendant in possession the equitable right and title of the original grantee:—"the plain intent of the statute, being," in the language of Mr. Ballinger, counsel for the defendants in *Davila* agt. *Mumford et al.*, "to embrace any instrument purporting and intended to be a conveyance, and *equitably conveying the right of the grantor, although defective in strict law.*" Such an instrument, and no other, is a link in the chain of transfer. A forged or a void deed, or a trust deed, or a deed executed by an unauthorized agent, will not suffice as a link. A sheriff's deed, when the defendant in execution had only a dry legal title, or no title or estate whatever, and was not in possession, and never held under a recorded title, must be void and

therefore insufficient. Even in cases where not absolutely void, as where it passes to the purchaser an estate subject to outstanding equities, the sheriff's deed conveys a mere estate in trust, and therefore operates precisely as if the trust had been expressed on its face; and, surely, the purchaser with notice could not plead three years' possession under such a deed in bar of the very party for whom he took the property in trust.

After this analysis of the merits of the case, it is easy to dispose of the objections taken to the frame of the bill for multifariousness (the other grounds of demurrer are too frivolous to require notice), and to the admission of Holman's deposition in evidence.

Baldwin is entitled to a legal conveyance of the lots from the city company. To his bill praying for such a conveyance, it was proper, if not necessary, that he should make all persons parties who set up titles to the lots, or any of them, and deraigned their titles through the city company—particularly, if all such claimants derived title through one and the same conveyance alleged by them, and denied by Baldwin, to have been duly executed and delivered by the company to Holman. Though all of the claimants' are not interested in each and every lot, yet the complainant's cause of action, and right to relief, include them all. They all claim title, not only through the city company and by the same conveyance, but also through Holman, whom the complainant alleges to have been his trustee, and through the same sheriff's sale, which complainant asks the court to decree null and void. The claimants are alike interested in all the questions raised, and the same defence is available to them all. The case is to thus, as these defendants,

within the rule as laid down by the authorities cited on this point.

Had Baldwin instituted as many suits as there were claimants of lots, the exception of multiplicity of suits would have been sustainable. Clearly, the claimants have not been prejudiced by their joinder in one suit.

McKinney and Williams were properly joined as defendants, as the bill sought to have the sale under their execution set aside, and it was their privilege to be heard in its defense. Moreover, McKinney was a proper party as a purchaser, entitled to set up want of notice; and besides, he had so mixed himself up with the whole transaction as by his personal conduct to make it necessary that the bill should be filed, and complainant was entitled to a discovery from him. Williams has not appealed. Even if McKinney and Williams were improperly joined in the suit, their misjoinder would affect merely the question of costs.

Holman's testimony was plainly admissible. He had no interest whatever in either the subject-matter, the object, or any possible result of the suit. To put the case as favorably to the defendants as possible, Holman had taken an assignment, or conveyance, of the property as trustee for Baldwin, and when called upon for a reconveyance had executed and delivered such a one as was accepted by Baldwin as satisfactory and sufficient. If Baldwin accepted without objection a deed so defectively acknowledged, or attested, that it could not be duly recorded—much more, if he was not diligent in filing the deed for record—that was his own laches for which Holman could in no event be responsible. As Baldwin was the party interested, and Holman was merely an accommodation-trustee, it was the duty of the former to see to the preparation, execution, acknowledg-

ment and registration of all conveyances, both to and from Holman.

Nor would the covenant in Holman's deed fix any liability upon him, if Baldwin were to fail of a recovery in this suit. The cloud on the title did not exist at the date of that covenant, but was occasioned by the subsequent wrongful conduct of McKinney, Edmunds and Swett. But covenants of title do not extend to tortious acts of third parties, nor to defects arising subsequently to the date of the covenants.

Had the lots been Holman's and conveyed by him to Baldwin with covenants, and afterwards levied on and sold under execution against Holman, and had the purchasers taken title in consequence of the deed to Baldwin not having been duly recorded before the levy and sale, Baldwin would have had no remedy on the covenants against Holman; much less could he have such a remedy, Holman being a mere trustee, and his deed a release of the lots to Baldwin.

Even if Holman's testimony were rejected, the evidence would be sufficient to support the decree.

The frame of the decree cannot be objected to by the appellants on grounds affecting only those defendants who have not joined in the appeal, viz.: Wm. R. Baker, Smith, Williams' administrators and the Galveston City Company. The only relief sought, or decreed, as to Baker, is, that he be *permitted* to reconvey the lots to Baldwin. There is nothing in this, nor in Baker's relation to the suit, of which the appellants have cause to complain. Nor can they except to so much of the decree as relates to Smith. Nor even if the court were of the

opinion that the city company had executed and delivered to Holman a deed conveying the lots to him in trust (expressed on its face, or declared by parol), for Baldwin, would the appellants be heard to complain that the company is required by the decree to issue a conveyance of the same property to the *cestui que* trust. The company alone could object to the issuance of a second deed, in the case supposed. But the company is entirely neutral in the controversy between its co-defendants and the complainant. It neither asserts by answer the issuance of a deed to Holman, nor does it by answer, or appeal, object to the issuance of one to Baldwin.

The argument has been unnecessarily extended by the numerous concessions made, and suppositions entertained, in favor of the defense, with a view to show that in no aspect of the case—in no light in which the evidence could be regarded, could the decree appealed from be successfully attacked. But in its simplest analysis, the case is this:—The lots were bought and paid for by Baldwin; they were held by certificates, which were informally assigned, without consideration, to Holman as Baldwin's trustee, with the agreement that he was to take a conveyance of them from the city company in trust for Baldwin; no deed was in fact executed by the company, but the lots were included by Holman in a release executed by him to Baldwin of the property held by the former as trustee; they were afterwards levied on and sold under an execution against Holman, and purchased by persons having actual notice, and in part re-sold to persons having constructive notice, of Baldwin's claim and equity.